

**THE NOT-SO-SUPER MAJORITY: THE FILIBUSTER AND THE FUTURE OF
THE UNITED STATES SENATE**

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ABSTRACT

The debate over the use of dilatory tactics in the United States Senate is not new. Though initially used sparingly and without much notice, the modern filibuster has presented itself as the rule, not the exception, for legislation to pass the Senate. Such a *de facto* practice is arguably detrimental to democracy, as it takes an ever harder-lined anti-majoritarian slant in an already anti-majoritarian chamber and places an artificial threshold that many argue does more damage than good. This thesis seeks to assess the history of the filibuster and other pertinent dilatory tactics in the U.S. Senate to determine its effect on legislation. Specifically, this study aims to evaluate whether legislation that must overcome a filibuster reflects compromise more so than legislation passed by a majority vote or unanimous consent and identify what some of the motivating factors surrounding the filibuster are.

Chapter I focuses primarily on the background of the filibuster via a detailed review of its theoretical underpinnings and the arguments surrounding filibuster reform in the modern literature. Chapter II attempts to create an empirical measurement to determine how the filibuster effects legislation and, more specifically, if it causes legislation to become more bipartisan through the process. The findings of this assessment, while inconclusive, serve as a starting point for future research into the subject. Chapter III looks at contemporary political pressures on why the filibuster still exists and what the opposition to change is, along with deconstructing those arguments to assess their validity.

The goal of this work is to provide the public with a more palatable introduction and overview of the filibuster in the United States Senate that is both academically

rigorous and politically persuasive. With the continuation of rising anti-democratic sentiment across the nation and continuous empowerment of demagogic leaders by extremist media, this work strives to be one of the many that are written to support the American experiment that was originally put forth in 1789.

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Ozymandias

*I met a traveler from an antique land,
Who said—"Two vast and trunkless legs of stone
Stand in the desert... Near them, on the sand,
Half sunk a shattered visage lies, whose frown,
And wrinkled lip, and sneer of cold command,
Tell that its sculptor well those passions read
Which yet survive, stamped on these lifeless things,
The hand that mocked them, and the heart that fed;
And on the pedestal, these works appear:
My name is Ozymandias, King of Kings'
Look on my Works, ye Mighty, and despair!
Nothing beside remains. Round the decay
Of that colossal Wreck, boundless and bare
The lone and level sands stretch far away.*

– Percy Bysshe Shelley

Introduction

Dearly beloved, we are gathered here today to mourn the death of the world's greatest deliberative body, the United States Senate. Born out of the compromise between the large and small states during the constitutional convention in Philadelphia, the Senate stood as a beacon to other nations as a rival of the Imperial Senate of Rome.¹ Its membership represented some of the most esteemed statesmen to walk this Earth, including Henry Clay, Daniel Webster, Richard Russell, Everett Dirksen, Wayne Morse, John F. Kennedy, Robert F. Kennedy, Edward M. Kennedy, Robert C. Byrd, and countless other esteemed leaders.² Though these great men were able to change the nation, they all faced the illness that has finally ended the reign of the Senate among other institutions of government. That illness was the filibuster.

This is what the author imagines a eulogy for the Senate would sound like, should one ever be given.³ Fortunately, one has not necessarily been given, but as the country becomes ever more polarized it would make sense for the remarks to at least be prepared. It is the opinion of the author and several prominent scholars that the filibuster is a poison to the institution, with it causing more harm than the arguments in favor of it espouse.⁴ In an attempt to elucidate the harm caused by the filibuster, the author wishes to approach the issue from three prominent directions: academic, empirical, and political.

¹ James Madison, *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, (Athens, OH: Ohio University Press, 1985).

² U.S. Senate, *Senators of the United States 1789-Present*, <https://www.senate.gov/artandhistory/history/resources/pdf/chronlist.pdf>

³ The author notes that he has a flair for the dramatic.

⁴ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997); Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* (New York: Liveright Publishing Corp, 2021); Gregory J. Wawro and Eric Schickler, *Filibuster: Obstruction and Lawmaking in the U.S. Senate* (Princeton: Princeton University Press, 2006)

In approaching the issue from the academic side, a thorough, but by no means exhaustive, assessment of the academic literature surrounding the filibuster will be analyzed to identify various schools of thought regarding the filibuster. Beginning with a general history of the practice, the goal of this approach is to have a general understanding of three subgroups of thought: constitutionally approved filibusterism, political efficiency, and finally reforms academics suggest would help the Senate's standing.

After first laying out the general groundwork provided by a look at the literature, it will then be necessary to test the argument surrounding political efficiency. In this chapter it will be necessary to use multiple tests of not only partisanship but coalition cohesiveness to try and determine if legislation subject to the filibuster is moderated through the floor process in the Senate. At the end of the chapter there will be a breakdown of the results and what future steps, if any, must be taken to further understand the partisanship of legislation subject to a filibuster.

Finally, it will be necessary to address some, but not all, of the political pressures that lead Senators to filibuster. Focusing on the history of the Senate as an institution, giant characters of the filibuster and their subsequent mythos, and finally the procedural incentives for filibustering, an inference into why Senators oppose change to the practice will be conducted. All arguments presented via opinion pieces and statements will be deconstructed and assessed on the merits of each, finally resulting in what the potential for reform is in the 117th Congress.

The author wishes to use this moment to say that he has attempted to conduct his research in a non-biased way, but the author is also willing to concede that his affinity for

politics does occasionally tip the scale in one direction or another. To combat this, rigorous revision and rewriting has occurred, and general arguments made by pundits have been omitted from the research.

CHAPTER ONE

The Filibuster in The Eyes of Academia

Introduction

There is no other parliamentary tactic in the American government known better than the filibuster. Perhaps this is due to the 1939 film *Mr. Smith Goes to Washington*, where the fictional Senator Jefferson Smith filibusters corrupt legislation to the point of physical exhaustion and collapse.⁵ Additionally, the news media has started casting more light on the tradition through mainstream cable networks, print media, and digital news. Though well known to the public, historically there have been surprisingly limited analyses focused on the study of the filibuster. It took until the 1940 publication of Franklin Burdette's *Filibustering in the Senate* for scholarly work on the subject to even begin. A few short works during the 1970s added to the list, but it was the addition of Binder and Smith's text, *Politics or Principle*, in 1997, that catapulted the filibuster to be a serious study that merited investigation.

Thanks to the rise in recent scholarship, we have a better understanding of this dilatory tactic. We have been presented with some substantial arguments surrounding the filibuster, most notably a constitutionally implied argument, an efficiency argument, and a plethora of arguments around how reform, if necessary, should take place. It is from these arguments around the filibuster that I focus on for this chapter. The conclusion reviews what areas must be further assessed if we are to subscribe to one of these arguments.

⁵ *Mr. Smith Goes to Washington*, directed by Frank Capra (Columbia Pictures, 1939), Blu-Ray (Sony Pictures, 2018).

Front Matter: Definitions and a Historical Perspective

The term filibuster has its early roots in the English language as a term for pirates and plunderers, given that those engaging in a filibuster were essentially plundering time.⁶ Though the use of dilatory tactics and other “flagrant legislative obstruction” was well known to Senators before 1863, it appears that the term filibuster did not take hold until then.⁷ Today, Senators are verse in applying multiple dilatory tactics to take up time (e.g. quorum calls, roll call votes, multiple amendments) that fit the overarching definition of a filibuster, but for the purposes of this paper, the term “filibuster” will mean two things. First, it stands for the abuse of the Senate’s rules regarding the unlimited debate on legislation as allowed by Rule XIX. Second, it means the threat of a filibuster from any member of the Senate or the threat to object to unanimous consent.⁸ In common parlance, the term “filibuster” refers to either talking a bill to death by extended debate or notifying the leadership of the *intent* to filibuster, also called a “stealth filibuster.”⁹

Before 1917, Senators could talk for as long as they were physically able with no means of closing debate.¹⁰ Given the workload of the Senate and the smaller number of Senators, endless discussion was rarely used, but in 1917, Rule XXII was adopted out of necessity, thus creating the ability to end debate through the adoption of a cloture, or

⁶ Franklin Burdette, *Filibustering in the Senate* (Princeton: Princeton University Press, 1940), 5.

⁷ Ibid.

⁸ U.S. Congress, Senate, Committee on Rules and Administration, *Standing Rules of the Senate*, 113th Cong., 1st sess., 2013, S.Doc. 113-18, 6-7; and Catherine Fisk and Erwin Chemerinsky, “The Filibuster,” *Stanford Law Review* Vol. 49, no. 2 (January 1997): 181-254, accessed February 15, 2021, <https://www.jstor.org/stable/1229297>.

⁹ Ibid.

¹⁰ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 5-7.

closure, motion.¹¹ This motion required two-thirds of all senators present and voting to invoke cloture.¹² Over time, the rule has been adjusted to reflect different thresholds for adoption. In 1975, the Senate agreed to S.Res. 4, which “reduce[d] the cloture requirement for all measures to three-fifths of those present and voting,” and this standard still exists today.¹³

Under current rules, a cloture motion requires the signature of 16 senators to bring the motion to the floor and potentially end debate. If 16 Senators sign the motion, then “one hour after the Senate meets on the following calendar day but one,” the Senate can limit debate with three-fifths of Senate membership voting in support of cloture on legislation, and two-thirds of those present and voting to invoke cloture on a change in the rules. Once cloture is invoked, any remaining debate of the pending question is then limited to thirty hours.¹⁴ Once cloture is invoked, the debate can be further constrained by a unanimous consent agreement under Rule XIX, but this is statistically improbable, given that a single determined senator can prevent such a motion from succeeding.¹⁵

In an attempt for a majority that is under three-fifths of the Senate’s membership to legislate, the “nuclear option” removing the supermajority requirement was seriously considered and has only caused further complication and argument among academic and

¹¹ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 5-7; The necessity mentioned here came from a filibuster of President Wilson’s Armed Ship Bill, which would have allowed for American merchant vessels to protect themselves at sea from Germany and her First World War allies. His seething rebuke of the filibustering senators is discussed in detail in Chapter III. Franklin Burdette, *Filibustering in the Senate* (Princeton: Princeton University Press, 1940), 118-123.

¹² *Ibid.*

¹³ Kenneth A. Shepsle, *Rule Breaking and Political Imagination* (Chicago: University of Chicago Press, 2017), 51.

¹⁴ U.S. Congress, Senate, Committee on Rules and Administration, *Standing Rules of the Senate*, 113th Cong., 1st sess., 2013, S.Doc. 113-18, 6-7

¹⁵ *Ibid.*

politically engaged circles. Some political scientists predicted change in how cloture might be invoked as a potential filibuster reform, citing the potential use of parliamentary tactics by the majority to allow for a simple majority to invoke cloture on judicial nominees.¹⁶ In 2013, the nuclear option was used for the first time for the confirmation of lower court judges and executive branch presidential nominations by then-majority leader Harry Reid (D-NV).¹⁷ It was used a second time in 2018, by then-majority leader Mitch McConnell (R-KY) to change the cloture threshold for Supreme Court nominees.¹⁸ Today, the only cloture motion that requires more than a simple majority to be invoked is for legislation.¹⁹

The Constitutional Permission Structure

Article I, §3 of the Constitution establishes the Senate as the upper chamber of the United States Congress.²⁰ In *Federalist Paper No. 62*, James Madison argues that the senate chamber was designed to be insulated from strong feelings and hot-button issues that could be detrimental to the fledgling democracy.²¹ This insulation initially came by the selection of Senators by their state legislatures, rather than from direct election like in the House, thus serving as a filter of the public's passions. With the ratification of the 17th Amendment to the Constitution in 1913, the filter of public passion was removed to

¹⁶ Gregory J. Wawro and Eric Schickler, *Filibuster: Obstruction and Lawmaking in the U.S. Senate* (Princeton: Princeton University Press, 2006), 5.

¹⁷ Paul Kane, "Reid, Democrats trigger "nuclear" option; eliminate most filibusters on nominees," *Washington Post* (Washington, D.C.), November 21, 2013, accessed on March 25, 2021.

¹⁸ Thomas Jipping, "5 Years After Going Nuclear, Democrats Have Reaped What They Sowed," Heritage Foundation, November 26, 2018, accessed on March 25, 2021.

¹⁹ Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* (New York: Liveright Publishing Corp, 2021), 230.

²⁰ U.S. Const. Article 1, §3 (1789 edition).

²¹ James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (Dublin, Ohio: Coventry House Publishing, 2015), 302-306.

allow for the direct election of Senators, therefore bringing in more zealous, and more partisan, senators.²² This causes a major influence on the filibuster in terms of the frequency of its use, despite the filibuster being previously used by Senators elected by the state legislature. Direct election makes Senators answerable only to the voter and not to the state legislature. As insinuated before, this creates an environment for more extreme viewpoints to be sworn into the Senate, which in turn leads to more partisan filibusters based on the motivating factor behind nearly all Congressional decisions: reelection.²³ For the consideration of legislation and congressional operations, Article I, §5, clause 2 states that “Each House may determine the Rules of its Proceedings.”²⁴ Binder and Smith determine that the filibuster is constitutionally permissible since unlimited debate by Rule XIX of the Standing Rules of the Senate is simply an exercise of this constitutional clause. Arenberg and Dove provide the necessary support to this constitutionality argument by highlighting the adoption of a new Senate rule in 1959 that establishes itself as a continuing body, as was previously understood by past Congresses.²⁵ Without the ability to operate under basic parliamentary procedure at the beginning of a new session, as the House does, it keeps the Senate in a continuous state of business and, therefore, will continuously require the application of Rule XIX.²⁶ The

²² U.S. Const. Amendment 17.

²³ R. Douglas Arnold, *The Logic of Congressional Action* (New Haven, CT: Yale University Press, 1990); The assumption here is derived from the Madisonian theory as discussed in *Federalist No. 63* and from a logical extension of the research in *Congress: The Electoral Connection* by David R. Mayhew. Though Mayhew focuses largely on the House of Representatives, it stands to reason that the larger constituencies of Senators would result in a larger percentage of hyper-partisans, thus allowing for the theory of hyper-partisan primaries to be extended to the Senate. Currently, there is insufficient research to prove or disprove this assumption and future research is necessary.

²⁴ U.S. Const. Article I, § 3

²⁵ Richard A. Arenberg and Robert B. Dove, *Defending the Filibuster* (Bloomington: Indiana University Press, 2012), 120-121.

²⁶ *Ibid.*

combination of more zealous Senators and the inability to remove the supermajority requirement at the convocation of the newly elected Congress creates what the framers would consider a dangerous inroad for violent factions, since there is no way to course correct in a way that is not marred by years of precedent.²⁷

During the era from the First Congress to 1806 every floor vote was subject to the previous question rule, which would end debate on a measure if necessary, but it was rarely used by Senators of the time.²⁸ Michael Gerhardt notes an exception to this generalization when the abuse of the previous question rule was used within the First Congress regarding the location of the Congress, but he does emphasize that it was seldomly used before its abolition in 1806.²⁹ From that point, he notes that “Senate practice from 1806 until 1917 allowed the smallest minority possible—a single senator—to bar a floor vote on any legislative matter by engaging in an extended speech.”³⁰

While scholars do recognize that the filibuster is constitutional through one interpretation of the document, many are quick to note that a historical perspective on constitutional theory negates this position. For example, one study examining Article 1 §7 of the Constitution argues that “where the Constitution does not specify otherwise, the word “passed” [...] should be understood to prescribe majority rule,” under the “principle of majoritarianism.”³¹ Support for this line of reasoning comes primarily from *Federalist 22* and *Federalist 58*, in which Hamilton and Madison argue against the

²⁷ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 198-200 ; U.S. Const. Amendment XVII

²⁸ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 198-200

²⁹ Michael J. Gerhardt, “The Constitutionality of the Filibuster.” *Constitutional Commentary* 21, 451- 452

³⁰ *Ibid.*

³¹ Josh Chafetz and Michael J. Gerhardt, “Is the Filibuster Constitutional?” *University of Pennsylvania Law Review* 158, 249

conception of supermajority rule.³² In *Federalist 22*, Hamilton opines on the ills of the Articles of Confederation and specifically the requirement that two-thirds of the states concur on the legislation before Congress, noting that:

The public business must, in some way or other, go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of the public good. And yet, in such a system, it is even happy when such compromises can take place: for upon some occasions things will not admit of accommodation; and then the measures of government must be injuriously suspended, or fatally defeated. It is often, by the impracticality of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savor weakness, sometimes border upon anarchy.³³

Madison echoes these sentiments in *Federalist 58* when discussing the determination of Representatives in the House, writing:

It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of a quorum for a decision. That some advantages might have resulted from such a precaution, cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty and partial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.³⁴

³² James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (Dublin, Ohio: Coventry House Publishing, 2015), 67-96, and 284-288.

³³ *Ibid.*, 105.

³⁴ *Ibid.*, 287-288.

Outside of the scope of filibustering legislation, there is also an argument that the filibuster was never meant to apply equally between presidential nominations and legislation. One law review article argues that the “principle of majoritarianism,” did not apply to presidential nominations because of interpretations of Rule XXII, but rather majoritarianism was only required for bills or joint resolutions that need Presidential approval.³⁵ This argument was somewhat undercut by the use of the nuclear option in 2013; however, the study also contends that Article 1 § 7 of the Constitution only applies to legislation when it reaches the floor, not the process through which it gets to the floor.³⁶ This adds an interesting wrinkle that may or may not be covered by the Senate’s recent rules changes.

Overall, the academic assessment through the lens of the Constitution is largely unified, with most sources arguing that minority control by obstruction is technically constitutional and a supported claim to the use of the filibuster on legislative terms. However, it is important to note again that the framers were more concerned with the structure of the Senate and not the specific rules which govern the chamber.³⁷ If anything regarding rules can be inferred from the notes of the time, it is that the framers considered a supermajority requirement to be an anathema to democratic rule.

³⁵ Josh Chafetz and Michael J. Gerhardt, “Is the Filibuster Constitutional?” *University of Pennsylvania Law Review* 158, 255.

³⁶ *Ibid.*

³⁷ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 198-200.

The Political Efficiency Argument

Regarding efficiency, there are callbacks to the earlier argument of constitutionality, but with more politically charged results. Proponents of the efficiency argument believe that a Senate devoid of the filibuster will allow more legislation to pass through the chamber because filibusters are inherently a partisan exercise.³⁸ It stands to reason that this is true, especially when looking at the statistics of cloture motions, which are indicative of an official filibuster, as seen in Figure 1.³⁹

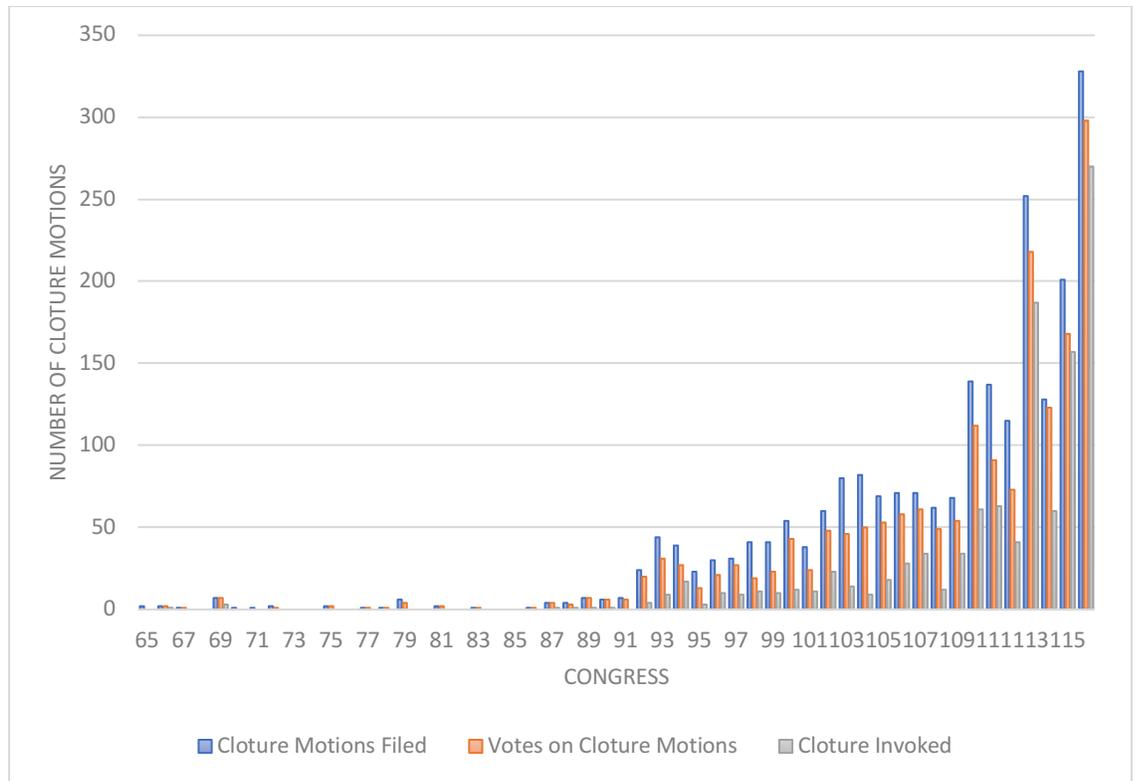


Figure 1 – Senate Action on Cloture Motions by Congress

³⁸ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 90.

³⁹ U.S. Senate., 2021, *Cloture Motions*, Accessed May 15, 2021, <https://www.senate.gov/legislative/cloture/clotureCounts.htm>.

There is also a political incentive, as when the Senate majority party schedules legislation, it might choose issues that “force minority party members to either cast an unpopular vote or disappoint some of their core supporters—perhaps leading to a challenge in their next primary.”⁴⁰ This is advantageous for the majority, as putting the minority party members on the record can cause frustrations with their constituents, potentially causing the seat to be in play nationally if the incumbent is removed during the primary because their voting record was exploited for campaign material.⁴¹ In an attempt for self-preservation, this sets up the minority party to use the filibuster to prevent uncomfortable votes. Some see this action as a parliamentary veto.⁴²

Given this threat of filibuster, it is logical to assume that filibustering incentivizes a bipartisan compromise. For some, “the filibuster, which gives us bipartisan legislation in the Senate, is the political counterweight to concerns over the negative consequences of more polarization and partisanship.”⁴³ Others agree with the concept of compromise legislation that stems from the protection of minority rights as an important counterweight that could prevent overzealous partisanship empowered by majority status.⁴⁴ Senate protection of minority rights stands in contrast with the House, where the minority has virtually no say in the operation of the chamber.⁴⁵ In many respects,

⁴⁰ Gregory Koger, “Filibustering and Partisanship in the Modern Senate,” in *Party and Procedure in the United States Congress* ed. Jacob Strauss (Lanham, Maryland: Rowman & Littlefield, 2012).

⁴¹ Jacob Straus, “Let’s Vote: The Rise and Impact of Roll Call Votes in the Age of Electronic Voting,” in *Party and Procedure in the United States Congress* ed. Jacob Straus (Lanham, Maryland: Rowman & Littlefield, 2012).

⁴² Gregory Koger, “Filibustering and Partisanship in the Modern Senate,” in *Party and Procedure in the United States Congress* ed. Jacob Straus (Lanham, Maryland: Rowman & Littlefield, 2012).

⁴³ W. Lee Rawls, *In Praise of Deadlock* (Washington, D.C.: Woodrow Wilson Center Press, 2009), 106.

⁴⁴ Richard A. Arenberg and Robert B. Dove, *Defending the Filibuster* (Bloomington: Indiana University Press, 2012), 68.

⁴⁵ Jennifer Clark, “Minority Party Strategies and the Evolution of the Motion to Recommit in the U.S. House,” in *Party and Procedure in the United States Congress* ed. Jacob Strauss (Lanham, Maryland: Rowman & Littlefield, 2012)

minority Senators work hard to protect their right to unlimited debate. For them, “the idea of a majority-rule Senate is one of the biggest fears of many members. They actively dread losing the use of extended debate, which they believe separates them from their counterparts in the House.”⁴⁶

Unfortunately for proponents of this idea, there is scant evidence to support it. Those who claim bipartisanship results because of the filibusters often use isolated cases to substantiate their claims.⁴⁷ While it is difficult to count all legislation that has been impacted by the filibuster, Binder and Smith identified forty-one measures killed by a filibuster that had support of a Senate majority, House majority, and the President of the United States with an exponential rise in killed legislation happening in the 1960s and beyond.⁴⁸

There are, however, some exceptions to the compromise argument. For example, one study of the 1939 Reorganization Act creates a majoritarian exception, or “a provision included in statutory law that exempts some future piece of legislation from a filibuster by limiting debate on that measure.”⁴⁹ Majoritarian exemptions can be divided into two different subtypes. One is delegation exceptions, which shuffle power in Congress and allow a single individual to develop policy changes and give special procedural protections to the given proposal. The other is executive oversight exceptions, where Congress gives protection to measures that will ultimately approve or disapprove presidential action.⁵⁰ We see these used more often than not in budget reconciliation

⁴⁶ Zachary Stokes, *Tyranny of the Minority: Evolution of the Filibuster and Ways to Reform its Usage* (Baltimore: Johns Hopkins University, 2011), 90.

⁴⁷ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 158

⁴⁸ *Ibid.*

⁴⁹ Molly E. Reynolds, *Exceptions to the Rule* (Washington, D.C., Brookings Institution Press, 2017) 18.

⁵⁰ *Ibid.* 22.

legislation, and Senators are not afraid to abuse this exception to the rules to circumvent a potential filibuster.

In 2010, the Senate consideration of the Patient Protection and Affordable Care Act (colloquially known as Obamacare) which was handled under reconciliation as provided through the 2009 budget resolution serves as an example of how the Senate has worked around the filibuster for landmark legislation.⁵¹ This circumvention strikes at the bipartisan argument, but it is worth noting that this blow is softened by the Senate parliamentarian, who has the final word on whether a provision meets the criteria to be included in the limited debate measure.⁵²

Potential Reforms for the 117th Congress and Beyond

In recent years, surveys indicate that as much as one-third of the American public would like to see filibuster reform, and multiple reform ideas have been proposed by academics and politicians alike.⁵³ Perhaps the most obvious is the abolition of the filibuster.⁵⁴ While getting rid of the filibuster sounds the most appealing to more liberal reformers, such a change could result in unintended consequences and scorched-earth politics in the Senate.⁵⁵ Further, it is unclear how the removal of the filibuster would take

⁵¹ Patient Protection and Affordable Care Act, Public Law 111-148; Benjamin Ginsberg and Kathryn Wagner Hill, *Congress: The First Branch* (New Haven: Yale University Press, 2019) 132.

⁵² Benjamin Ginsberg and Kathryn Wagner Hill, *Congress: The First Branch* (New Haven: Yale University Press, 2019) 132.

⁵³ Brian R.D. Hamm, "Modifying the Filibuster: A Means to Foster Bipartisanship While Reining in its Most Egregious Abuses," *Hofstra Law Review* 40 (3), 745-748 ; Monmouth University Poll, 2021, *National: Public Divided on Filibuster Reform, But Few Want to Dump It Entirely*, Poll, West Long Branch, New Jersey: Monmouth University.

⁵⁴ Mark Strand and Timothy Lang, *The Filibuster in the U.S. Senate: Options for Reform* (Washington, D.C., Congressional Institute, 2017) 5.

⁵⁵ Thomas Jipping, "5 Years After Going Nuclear, Democrats Have Reaped What They Sowed," Heritage Foundation, November 26, 2018, accessed on March 25, 2021.

place. Assuming that the Senate was unable to reach the two-thirds majority to change the rules as required by the Standing Rules, there are multiple outlets to abuse precedent and procedure in the chamber. The most reasonable route is a point of order on a pending motion regarding a rules motion or motion to proceed; the chair rules alongside existing precedent, against the point of order that tries to establish a new interpretation of the rules; the majority appeals the ruling of the chair, and the Senate approves the appeal by a simple majority.⁵⁶

While such a parliamentary route is effective, abusing parliamentary procedure to curb abusive parliamentary procedure appears offensive to the process, though activists may argue that the ends justify the means. Another option would be the use of a Standing Order, which would come into statute via unanimous consent, which is an unlikely scenario, or through legislation enacted by the Senate.⁵⁷

While not as cunning or flashy as an abuse of parliamentary procedure, there is historical precedent to include other branches of government to pressure the Senate into relinquishing some of its power.⁵⁸ Pressure from the House of Representatives by withholding appropriations for certain Senators' objectives or general party objectives could be used to bend the Senate to the popular chamber's will.⁵⁹ Such an issue would,

⁵⁶ Valerie Heitshusen, *Majority Cloture for Nominations: Implications and the "Nuclear" Proceedings* (Washington, D.C., Congressional Research Service, 2013), 12.

⁵⁷ Martin B. Gold and Dimple Gupta, "The Constitutional Option to Change the Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster," *Harvard Journal of Law and Public Policy* 28 (1), 269.

⁵⁸ Gerard N. Magliocca, "Reforming the Filibuster," *Northwestern Law Review* 105 (1), 323-28.

⁵⁹ *Ibid.*

however, require the reintroduction of pork-barrel spending in the House, which was banned in May of 2019 by the GOP-led chamber.⁶⁰

Another suggested reform is one is for progressively lower cloture vote thresholds each time cloture fails on a motion.⁶¹ This particular idea is rooted in historical precedent, with the original cloture motion having been set as a supermajority of 2/3rds of senators "present and voting."⁶² It is also a particular view championed by former Senator Tom Harkin, who suggested that instead of following a theoretical eight-day timeline to have the majority invoke cloture with the way they had legislation written, the majority would be forced to moderate legislation to not be stuck in a procedural hole.⁶³ It would be costly to the majority to wait out a filibuster to get a lower cloture threshold, as it would take multiple days and hours of floor time to properly follow the rules.⁶⁴

A fourth suggestion that has been gaining in popularity is the return to politically costly filibusters.⁶⁵ There are multiple subcategories in this suggestion, but the strongest argument is in favor of requiring Senators to hold the floor and debate, effectively halting the practice of using a "stealth filibuster" and forcing senators to go on record in front of the public to say why they are against a piece of legislation.⁶⁶ During these "talking filibusters" Senators are required to physically stand and hold the floor for the duration of

⁶⁰ Jordan Carney, "Senate GOP votes to permanently ban earmarks," last modified May 23, 2019, <https://thehill.com/homenews/senate/445338-senate-finance-senate-gop-votes-to-permanently-ban-earmarks>.

⁶¹ Mark Strand and Timothy Lang, *The Filibuster in the U.S. Senate: Options for Reform* (Washington, D.C., Congressional Institute, 2017) 6.

⁶² Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 7.

⁶³ Mark Strand and Timothy Lang, *The Filibuster in the U.S. Senate: Options for Reform* (Washington, D.C., Congressional Institute, 2017) 6.

⁶⁴ *Ibid.*

⁶⁵ Gregory Koger, *Filibustering: A Political History of Obstruction in the House and Senate* (Chicago: University of Chicago Press, 2010) 197-199.

⁶⁶ Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* (New York: Liveright Publishing Corp, 2021), 246-247.

their speech without yielding, thus forcing them to talk until they are no longer physically able.⁶⁷ In addition, the requirement of a quorum on the floor could also make an impact, as it keeps Senators away from fundraising, and the majority party could use this to their advantage if they force the minority party to be the ones who mainly constitute the quorum.⁶⁸

Concluding Remarks

Beginning with the constitutional argument, we find two camps addressing the ability for each chamber to make its own rules and the general purpose of the Senate as a whole. The argument seeking to abolish the filibuster based on constitutional grounds is a strong scholarly argument for removing the filibuster, but a weak political one. While it does follow a pattern of logic that is acceptable and supported by history, it fails to consider the political consequences of using constitutional theory to gain the support of the public. Convincing the public by way of this line of thinking would require the public to be somewhat knowledgeable of constitutional theory and historical precedent, which is a difficult hurdle to overcome.

The dangerous aspect of the argument in favor of the filibuster based on constitutional grounds is how easy it is for Congress to maintain the status quo. Additionally, the power of historical precedent in a chamber obsessed with its rules and rituals is not easily trifled with, which explains the multiple failed reforms based on these

⁶⁷ U.S. Congress, Senate, Committee on Rules and Administration, *Standing Rules of the Senate*, 113th Cong., 1st sess., 2013, S.Doc. 113-18, 6-7

⁶⁸ Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* (New York: Liveright Publishing Corp, 2021), 246-247.

grounds.⁶⁹ While the precedent is based on a lie, which we shall see in more detail in Chapter III, it has strength based solely on its longevity and persistence.

The argument surrounding the efficiency of the filibuster is the strongest political argument of substance against the filibuster. While proponents tout the importance of bipartisanship stemming from what is essentially forced compromise, it still remains that Congressional approval ratings remain dismal.⁷⁰ Some more educated voters point to the Senate and its forced compromise for stalling legislation that could help the American people, as they are often impatient as an electorate. Though it is tempting to suggest that the public is entrenched and knowledgeable within this debate, it appears not to be the case. Binder and Smith offer a scathing rebuke of the knowledgeable electorate by suggesting that there is too much going on for the public to have an opinion on something that is, ultimately, a small detail.⁷¹

What is important to note is that this argument surrounding bipartisanship and efficiency is incredibly difficult to test empirically, since various pieces of legislation go through varying life cycles that are both on the record in the *Congressional Record* and in Congressional hearings/markups, and off the record in the legislative offices of the Senators crafting the legislation. There are convincing reform arguments that suggest that the “stealth filibuster” does not force compromise, but again there is not any empirical study to support this claim, so it cannot be claimed that the filibuster is *de facto* a tool of compromise. Additionally, the lynchpin in the entire filibuster debate is the role of the

⁶⁹ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 164-167.

⁷⁰ “Congressional Job Approval,” *Real Clear Politics*, December 17, 2019, https://www.realclearpolitics.com/epolls/other/congressional_job_approval-903.html.

⁷¹ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 155.

majority as well as the minority. While we have discussed the role of the minority within the filibuster procedure, we have not deeply discussed the majority's role and exploitation of the practice. The majority leader's main responsibility is to properly manage the legislative agenda and Senate floor, working closely with Senate committee chairs and minority leadership to bring measures to the floor via unanimous consent.⁷² This usually comes with a fair amount of bargaining, but party leaders have gone to such lengths to have such a cohesive caucus that it practically forces the minority to filibuster.⁷³ Where some level of compromise is usually key to bring something to the floor, recent hyper-partisanship has turned the term compromise into a dirty word, despite the fact that "the entire structure of Congress is the result of compromise."⁷⁴ The reform options mentioned would best operate under this argument as well, as the reform would produce empirical evidence that would likely be more convincing to the public than any theoretical or philosophical argument.

⁷² Benjamin Ginsberg and Kathryn Wagner Hill, *Congress: The First Branch* (New Haven: Yale University Press, 2019) 132-134.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

CHAPTER TWO

Assessing the Partisanship of Legislation Subject to the Filibuster

Introduction

Accusations of political partisanship have existed since the beginning of the Republic. In *Federalist 10*, James Madison writes about partisanship under the guise of factionalism, where he stresses the importance of a properly ordered government to control its vices.⁷⁵ He says that:

Complaints are everywhere heard from our most considerate and virtuous citizens, . . . that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.⁷⁶

At face value, Madison seems to argue that partisanship is a problem created by the majority, not the minority. Therefore, it creates a system where the majority attempts to extinguish dissenting opinion. This is not entirely the case in *Federalist 10*, as Madison further notes:

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution.⁷⁷

⁷⁵ James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (Dublin, Ohio: Coventry House Publishing, 2015), 41.

⁷⁶ Ibid.

⁷⁷ Ibid, 44; It is necessary to note that Madison's first remedy to controlling factions was the complete abolition of said factions, but if that remedy were to be pursued it would create problems worse than the original. This concept would be true if and only if all factions played by the same rules of conduct, but some factions have proven more willing to be obstructionist than others.

From Madison's perspective in *Federalist 10*, it seems that the intersection of hyper-partisanship and the reality of a modern day 60-vote cloture threshold in the Senate creates tension between Senate majorities and minorities in a positive way.

Defenders of the filibuster cite the above logic from *Federalist 10* and the idea that the 60-vote threshold creates an incentive for bipartisan compromise given the unlikelihood of a party holding supermajority status in the chamber at any given time.⁷⁸ As discussed in Chapter I, critics of this position cite the Framers' disdain for the supermajority after the failed Articles of Confederation and the cherry-picked examples that supporters use for defending the institution.⁷⁹ While both political stakeholders and consumers of political news alike have debated the filibuster, there have been few empirical assessments to whether or not this argument is true, given the difficulty of doing so. It is the goal of this chapter, however, to make a valiant attempt at measuring the partisanship of filibustered legislation and how the filibuster effects it. For the purposes of this work, partisanship is defined in terms not of the electorate, but in terms of the political elite elected to public office. The distinction here is not a refutation of the

⁷⁸ See the following: W. Lee Rawls, *In Praise of Deadlock* (Washington, D.C.: Woodrow Wilson Center Press, 2009), 106; Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 162-163; Kyrsten Sinema, "Opinion: Kyrsten Sinema: We have more to lose than gain by ending the filibuster," *Washington Post* (Washington, D.C.), June 21, 2021, accessed July 4, 2021, <https://www.washingtonpost.com/opinions/2021/06/21/kyrsten-sinema-filibuster-for-the-people-act/>; and Joe Manchin, "Joe Manchin: Why I'm voting against the For the People Act," *Charleston Gazette-Mail* (Charleston, WV), June 6, 2021, accessed July 4, 2021, https://www.wvgazettemail.com/opinion/op_ed_commentaries/joe-manchin-why-im-voting-against-the-for-the-people-act/article_c7eb2551-a500-5f77-aa37-2e42d0af870f.html.

⁷⁹ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997), 158

Merriam-Webster definition of partisanship, but in the motivating factors of making someone partisan.⁸⁰

Measuring Partisanship: Definitions and Two Different Sources

Electoral partisanship is a complicated subject. Its study borrows from many different fields of study, namely psychology, sociology, and Darwinian evolutionary theory. While it is not the purpose of this work to discuss all aspects of these theories in detail, the consensus regarding electoral partisanship is that it “clearly fits the psychological definition of an attitude—a generalized and enduring positive or negative response to an object” and that “party identification represents an instance of the social-psychological concept of group identification.”⁸¹ This creates a cyclical nature of partisan attitudes influencing partisan behavior and *vice versa*, creating an endless cycle of ever-increasing partisanship and polarization.⁸²

While the electorate has its partisan foundation in psychological and therefore inherently emotional behaviors, elected official partisanship finds itself rooted in

⁸⁰ Merriam-Webster defines partisanship as “the quality or state of being partisan : strong and sometimes blind adherence to a particular party, faction, cause, or person” ; “Definition of PARTISANSHIP.” Merriam-Webster., accessed Aug 20, 2021.

⁸¹ Richard Petty and John Cacioppo, *Attitudes and Persuasion: Classic and Contemporary Approaches*, (Dubuque, IA: William Brown Publishers, 1981) as quoted in Steven Greene, “The Social-Psychological Measurement of Partisanship,” *Political Behavior* Vol 24, no. 3, 171-197 ; For a more in-depth analysis of electoral partisanship, see Angus Campbell, Philip Converse, Warren Miller, and Donald Stokes, *The American Voter* (Chicago, IL: University of Chicago Press, 1960), Warren E. Miller and J. Merrill Shanks, *The New American Voter* (Cambridge, MA: Harvard University Press 1996), Morris Fiorina, *Retrospective Voting in American National Elections* (New Haven, CT: Yale University Press 1981), Charles Franklin and John Jackson, “The Dynamics of Party Identification,” *American Political Science Review* 77: 957-973, Ruth Hamill and Milton Lodge, “Cognitive Consequences of Political Sophistication,” in *Political Cognition*, eds. Richard R. Lau and David O. Sears, (Hillsdale, NJ: Lawrence Erlbaum), 69-93, Wendy Rahn, “The Role of Partisan Stereotypes in Information Processing About Political Candidates,” *American Journal of Political Science* 37, 472-496, and Michael S. Lewis-Beck, William G. Jacoby, Helmut Norpoth, and Herbert F. Weisberg, *The American Voter Revisited*, (Ann Arbor, MI: University of Michigan Press, 2011).

⁸² Michael S. Lewis-Beck, William G. Jacoby, Helmut Norpoth, and Herbert F. Weisberg, *The American Voter Revisited*, (Ann Arbor, MI: University of Michigan Press, 2011).

something much more cynical—reelection. David Mayhew argues in *Congress: The Electoral Connection* that “[i]t seems fair to characterize the modern Congress as an assembly of professional politicians spinning out political careers,” and are single-minded seekers of reelection.⁸³ R. Douglas Arnold supports this position in *The Logic of Congressional Action*, noting how elected officials pursue legislation that supports mass groups/industries and specific geographical zones, since both result in positive poll approval and such approval translates into favorable results at the polls.⁸⁴ Given the legislators desire to keep their jobs, it reasons to say that the intent to filibuster legislation is more rooted in showmanship that will result in reelection than some type of emotional, psychological, or ideological position.

Though measuring political attitudes in the electorate is a complicated psychological and statistical analysis, fortunately the simplicity of seeking reelection by elected officials allows for a more precise form of measurement founded in concrete actions—votes.⁸⁵ Political scientists have been developing empirical measures derived from roll call votes for nearly 100 years. In 1925, Stuart A. Rice created the first model that attempted to capture partisanship by way of roll call voting. In his model, Rice created both an “index of cohesion” and an “index of likeness between groups.” As shown in Figure 2, in Rice’s model the “yes” placeholder represents votes in the affirmative and the “no” placeholder represents votes against the motion in question.⁸⁶

⁸³ David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974).

⁸⁴ R. Douglas Arnold, *The Logic of Congressional Action* (New Haven, CT: Yale University Press, 1990).

⁸⁵ The measurement of electoral opinion and partisanship is complex due to the voluntary nature of voting and responding to inquiry, while roll-call votes are a requirement of the job when serving in an elected office. This fact allows for a clearer image than the opacity of public opinion polls and general election results.

⁸⁶ Stuart A. Rice, “The Behavior of Legislative Groups: A Method of Measurement,” *Political Science Quarterly* Vol. 40, no. 1, 60-72.

$$RI = \frac{|\text{yes} - \text{no}|}{\text{yes} + \text{no}}$$

Figure 2

This basic model was an innovative way of assessing the voting behavior of groups within legislative bodies, but it is not without its problems. Most importantly, Rice's model does not account for any form of ideology. Rather it presupposes that the researcher has already notated the legislator's coalitions before formulating the score. Subsequently, it is a poor measure of partisanship unless a researcher wants to understand partisanship solely through a lens of cohesiveness and likeness between the two parties.

More than 50 years later, political scientists Keith Poole and Howard Rosenthal reexamined roll call voting as a tool for measuring partisanship with the creation of NOMINATE scores. NOMINATE began as a three-step estimation process that can work in multidimensional settings, giving a factor to measuring the ideology of the subject.⁸⁷ This method uses a foundation of roll-call votes based on Phillip Converse's (1964) ideological continuum to plot individual Members of Congress on a scale, with the median of individuals showing control of Congress (i.e., a winning coalition of liberals or conservatives).⁸⁸

Since its creation, DW-NOMIANTE (the newest version of the measure) has become the gold standard used by academics to place Member of Congress on an ideological spectrum.⁸⁹ DW-NOMINATE has become so popular because it can provide

⁸⁷ Keith T. Poole and Howard Rosenthal, *Ideology and Congress*, (Transaction Publishers: New Brunswick, New Jersey, 2009), 1-31.

⁸⁸ Philip Converse, "The Nature of Belief Systems in Mass Publics", in *Ideology and Discontent*, ed. David E. Apter (New York: Free Press) in Keith T. Poole and Howard Rosenthal, *Ideology and Congress*, (Transaction Publishers: New Brunswick, New Jersey, 2009), 3.

⁸⁹ See the following: Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches* (Cambridge, MA: MIT Press); Nolan McCarty "In Defense of DW-NOMINATE," *Studies in American Political Development*, Vol 30, no 2, (2016) 176-184; Devin Caughey

a consistent, and easy to understand “score” that can predict how a Member of Congress will likely vote on an upcoming piece of legislation. However, there are some drawbacks. Not all roll call votes are substantive to determining ideology and therefore a predictor of behavior, as some roll call votes are purely partisan exercises to place Members on the record (i.e. “poison pill” votes on legislation meant to make a statement and not actually turn into law).⁹⁰ Additionally, all the types of voting, including voice vote, suspension of the rules, unanimous consent, and roll-call votes have different correlations when it comes to the bipartisanship of the final vote.⁹¹ The use of Rice and DW-NOMINATE scores to measure voting coalitions is useful when assessing the potential behavior of a legislative body, but individually they are incomplete indicators regarding the substance of legislation.

The goal of this work is to assess individual legislation and see how the filibuster impacts said legislation’s partisanship. Given this line of reasoning, we cannot rely solely on Rice and DW-NOMINATE scores. While excellent predictors of how legislators may behave when a bill comes to the floor, they do not properly assess the substance of the legislation from its inception.⁹²

To do this, two studies stand out. The first, *Stalemate: Causes and Consequences of Legislative Gridlock* by Sarah A. Binder, uses a model to predict whether a bill will

and Eric Schickler, “Substance and Change in Congressional Ideology: NOMINATE and Its Alternatives,” *Studies in American Political Development*, Vol 30, no 2, (2016) 128-146.

⁹⁰ Laurel Harbridge, *Is Bipartisanship Dead? Policy Agreement and Agenda-Setting in the House of Representatives* (Cambridge University Press: Cambridge, MA), 20-22.

⁹¹ Ibid.

⁹² For the purposes of this paper, the “inception” of legislation simply refers to the legislation as originally submitted to the desk. Hypothetically, someone could introduce a piece of legislation that is geared toward issue “A,” but by the end of the legislative process actually is geared toward issue “D.” Generally, these types of radical changes can come from amendments in the nature of a substitute or floor amendments in general.

become law. In the model's formulation, Binder factors in party agenda (via *New York Times Opinion* data), presidential attention, salience, and partisan polarization.⁹³ To assess partisan polarization, she uses the number of cosponsors of a bill as a proxy for party cohesion and likeliness, similar to Rice's concept. Figure 3 shows the formulation of Binder's model, where *P2* represents a scale of partisanship where a result of 50 is purely partisan and result of 0 is completely bipartisan.⁹⁴

$$P1 = \frac{\text{Party Cosponsors}}{\text{Total Cosponsors}}$$

$$P2 = | P1 - 50\% |$$

Figure 3

Another study that supports this style of assessment is Laurel Harbridge's *Is Bipartisanship Dead? Policy Agreement and Agenda-Setting in the House of Representatives*. She notes the importance of cosponsorship, writing that "Members do not casually attach their names to legislation, only to regularly vote against the bill or remove their name later."⁹⁵ She is also quick to note the disadvantages of using cosponsor coalitions, making clear that it is a much smaller sample size that has varying degrees of importance to members (i.e. it is something not important or will not go far vs. a political win for their district, and that cosponsored bills are not indicative of all introduced legislation).⁹⁶ For our investigation, there are merits to both systems and a combination of roll call votes used in Rice and NOMINATE scores along with cosponsorship coalitions is necessary to tracking the change in legislation over time.

⁹³ Sarah A. Binder, *Stalemate: Causes and Consequences of Legislative Gridlock*, (Brookings: Washington, D.C.), 84-93.

⁹⁴ *Ibid.*

⁹⁵ Laurel Harbridge, *Is Bipartisanship Dead? Policy Agreement and Agenda-Setting in the House of Representatives* (Cambridge University Press: Cambridge, MA), 25-26.

⁹⁶ *Ibid.*

Methodology and NOMINATE Averages

The first step in evaluating the filibuster is to pick a Congress and then identify the DW-NOMINATE scores of Senators. For this test I have selected the 116th Congress (2019-2020) because it is the last complete Congress before this assessment. Data on each Senators DW-Nominate score was collected from Poole and Rosenthal's data.⁹⁷

With the data collected, an analysis of individual pieces of legislation can commence. This study focuses only on Senate activities that can become law, as they are the only actions currently subjected to the 60-vote cloture threshold. Therefore, Presidential Nominations, measures that cannot become law (i.e. simple (S.Res.) and concurrent (S.Con.Res.) resolutions), and bills and joint resolutions that originated in the House are excluded. The House measures are not included because legislation coming from the House of Representatives complicated the model since DW-NOMINATE scores for the House tend to more diverse than in the Senate because of the number of Representatives (435) v. Senators (100).⁹⁸

Included in the data set is legislation that failed to overcome the cloture vote threshold as they might provide valuable insight into what type of effect the filibuster can have on legislation. In numerical totals, this whittles down the roll call votes that need to be assessed from 720 votes to a mere 92 votes.⁹⁹ Of those 92 votes, we must account for every affirmative vote and know who cast it, what their NOMINATE score is, and the

⁹⁷ Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet (2021). Voteview: Congressional Roll-Call Votes Database. <https://voteview.com/>

⁹⁸ Andris, Clio, David Lee, Marcus J. Hamilton, Mauro Martino, Christian E. Gunning, and John Armistead Selden. "The Rise of Partisanship and Super-Cooperators in the U.S. House of Representatives." *PloS One* 10, no. 4 (2015): e0123507, <https://www.ncbi.nlm.nih.gov/pubmed/25897956>.

⁹⁹ U.S. Senate, "Votes," (accessed August 20, 2021). https://www.senate.gov/legislative/votes_new.htm

average of the NOMINATE scores for the vote to assess the change over time.

Introductory scores are based off the average NOMINATE score of all sponsors of a piece of legislation, even if there is only one sponsor.¹⁰⁰

Findings in NOMINATE Averages

Of the 92 votes, a mere six bills successfully overcame a filibuster and passed the chamber.¹⁰¹ Table 1 shows the six bills that successfully overcame a filibuster and includes the bill number and bill title.

Table 1 – Bills Overcoming the Filibuster in the 116th Congress

Bill No.	Bill Title	Introductory NOMINATE Score	Final NOMINATE Score	Change in NOMINATE
S. 1	“Strengthening America’s Security in the Middle East Act of 2019”	0.455	0.241	-0.214
S. 47	“John D. Dingell, Jr. Conservation, Management, and Recreation Act,”	0.047	0.047	0
S. 1790	“National Defense Authorization Act for Fiscal Year 2020”	0.555	0.13	-0.425
S. 4049	National Defense Authorization Act for Fiscal Year 2021”	0.555	0.142	-0.413
S.J.Res. 68	“A joint resolution to direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress”	-0.029	-0.227	-0.198
S.578	"ALS Disability Insurance Access Act of 2019”	-0.02	0.099	0.119

¹⁰⁰ The purpose of this study is primarily focused on the role of the filibuster in the Senate and therefore fleeting external political pressures are not accounted for in the data set. The operative assumption is that political actors vote in their best interest to be reelected. Therefore, an assessment of the political winds surrounding each vote would be too time consuming and ultimately useless for this study. Chapter 3 will discuss in greater detail the politics of the filibuster and their motivating factors.

¹⁰¹ This is a success rate of 4.35%, therefore making the Senate a grossly inefficient institution, but this is not part of our inquiry in this study. Regarding efficiency, there is an argument suggesting that a majority-vote threshold would create an environment of more bills to be passed. This argument has standing and is discussed in Chapters I and III, but a concrete study is not possible given the speculative nature of the argument. I, along with others, hypothesize that the Senate would be more efficient given the lack of a 60-vote threshold. For more information see: Sarah A. Binder and Steven S. Smith, *Politics or Principle?*, (Brookings Institution Press: Washington, D.C., 1997), and Adam Jentleson, *Kill Switch*, (Liveright Publishing: New York, NY, 2021).

For the bills in Table 1, an average change in DW-NOMINATE scores of (-0.228) was noted from introduction to final passage. This suggests that the bills garnered more bipartisan support as they progressed through the chamber, as they became more liberal than their original introduction to the desk. At face value this would suggest that the filibuster does make legislation more moderate. However, this is not the *de facto* reality, given multiple problems with the use of NOMINATE averages.

The main issue with the utilization of average DW-NOMINATE scores for legislation harkens back to our definition of partisanship as previously discussed. An extremely conservative or liberal member of the chamber can introduce legislation as the sole sponsor and thus give the legislation an extreme DW-NOMINATE score, whereas a piece of legislation with 100% party cosponsor support will have a median score due to the conditions of finding the average DW-NOMINATE score of the entire coalition. A clear example of passed legislation would be both National Defense Authorization Acts referenced above. Both pieces of legislation had only one sponsor, Senator James Inhofe (R-OK), and therefore began the process with a DW-NOMINATE average of (.555), since Senator Inhofe was the sole sponsor of the legislation.¹⁰² The votes on passage had average DW-NOMINATE scores of (.130) for 2020 and (.142) for 2021, but the difference comes not necessarily from the moderation of the legislation but the sheer size difference between an individual senator and the entire chamber. S. 1 and S. 47, however, started with average DW-NOMINATE scores of (0.445) from 13 sponsors and (0.047) from 16 sponsors and ended with DW-NOMINATE scores of (0.241) with 77 votes in favor and (0.047) with 92 votes in favor, respectively.

¹⁰² Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet (2021). Voteview: Congressional Roll-Call Votes Database. <https://voteview.com/>

The Binder Score – Method and Findings

Since average DW-NOMINATE scores for legislation is problematic, the Binder calculation showcased in Figure 3 could give some more insight. In order to make that change, cosponsors are replaced with the more general term “support” to cover both cosponsors and affirmative votes. For this test, the average DW-NOMINATE scores are not necessary. Rather, the model emphasizes how votes were split along party lines. For ease and consistency, the Democratic Party is still used as the basis for the “Party Support” metric.¹⁰³ After determining the Binder score from the introduction to final passage, whether real change due to the filibuster should emerge.

For a visualization of this formulation, a good example is S. 47 from the 116th Congress. For this piece of legislation, there were 16 supports, eight Democrats and 8 Republicans. Figure 4 shows the calculation.

$$\frac{8 \text{ Democratic Supporters}}{16 \text{ total supporters}} = .50$$

$$|.50 - 50\%| = 0$$

Figure 4

As introduced, S. 47 is a perfectly bipartisan measure (e.g., supporters when the legislation was introduced). For the vote on final passage of S. 47, the bill had the support of 47 Democratic Senators out of the 92 Senators who voted. This results in the calculation for Figure 5:

¹⁰³ In the 116th Congress, there are two independent senators who caucus with the Democratic Party, Senator Bernie Sanders (VT.) and Senator Angus King (ME). For the purposes of our calculations, they will be included with the number of Democratic supporters.

$$\frac{47 \text{ Democratic Supporters}}{92 \text{ Total Supporters}} = .51$$

$$|.51 - 50\%| = 0.01$$

Figure 5

Figure 5 shows that S. 47 became slightly more partisan between introduction and final passage. During consideration of S. 47, no amendments were offered or accepted.

Therefore, the ability to shift the partisanship of the text was non-existent. Table 2 shows all six bills in the data set and their Binder scores at introduction and final passage along with the change in scores.

Table 2 – Binder Scores for Bills Overcoming a Filibuster in the 116th Congress

Bill Number	Binder Score at Introduction	Binder Score at Final Passage	Numeric Change
S. 1	.50	.02	-0.48
S. 1790	.50	.11	-0.39
S. 4049	.50	.21	-0.29
S.J.Res. 68	.41	.35	-0.06
S. 578	.08	.02	-0.06
S. 47	0	0.01	0.01

According to the data above, almost every measure in the dataset became less partisan during the legislative process. The fact that 5 out of 6 bills moved closer to a perfectly bipartisan score of “0” suggests a moderating effect due to the presence of a filibuster in the chamber. The exception to this is S. 47, which began with a perfectly bipartisan score and ended with a slightly more partisan score.¹⁰⁴

The Binder Score is also an imperfect metric for studying the partisanship of a piece of legislation as it also does not clearly delineate the difference between a piece of

¹⁰⁴ There are a few explanations for this phenomenon, all of which are possible. The first explanation is that, during the legislative process, the bill was amended to the point that it became unpalatable to some senators. The second is that the size difference between cosponsor coalitions and the entire senate chamber allow for a greater probability of there being an increase in partisanship purely from a mathematical standpoint.

legislation being more conservative or liberal. That information is solely in the mind of individual doing the calculation, as we can easily use Republican support instead of Democratic support in our calculation.

With such different results, a review of both the DW-NOMINATE scores and the Binder scores for the six measures might illuminate the differences in thinking about partisanship and the filibuster. As Table 3 shows, each measure appears to become more bipartisan as the it goes through the chamber due to the moderation of both DW-NOMINATE and Binder scores, however, they are both held back because they cannot compensate for the change in total number of votes. Again, a large setback to this approach is that it measures the effects of legislation and attempts to make a partisan judgment from the votes instead of measuring the content of the legislation and its ideological/partisan changes over time.

Table 3 – NOMINATE and Binder Scores for Bills Overcoming a Filibuster in the 116th Congress

BILL	INTRODUCTORY NOMINATE	INTRODUCTORY BINDER	FINAL NOMINATE	FINAL BINDER	CHANGE IN NOMINATE	CHANGE IN BINDER
S. 1	0.455	0.5	0.241	0.02	-0.214	-0.48
S. 47	0.047	0	0.047	0.01	0	0.01
S. 578	-0.02	0.08	0.099	0.02	0.119	-0.06
S. 1790	0.555	0.5	0.13	0.11	-0.425	-0.39
S. 4049	0.555	0.5	0.142	0.21	-0.413	-0.29
S.J.RES. 68	-0.029	0.41	-0.227	0.35	-0.198	-0.06
AVERAGE	0.261	0.332	0.072	0.12	-0.189	-0.198

Conclusions and Remaining Questions

From the data gathered in the 116th Congress, it appears that, based on DW-NOMINATE score changes and Binder score changes, nearly all pieces of legislation become more bipartisan when subject to a filibuster. However, it is important to note that these scores are imperfect standards of measurement. What they really tell us is that the *votes* became more bipartisan as the legislation progressed through the Senate, but not necessarily the legislation itself.

Running any sort of model regarding a particular bill's entire legislative lifecycle is not challenging. For an example, I have included a line graph of the average NOMINATE scores and Binder scores for S. 47 in Figure 6. In this example, we see a mirror image of affirmative DW-NOMINATE scores and Binder scores. This is because as more liberal members voted to table the amendments and fewer conservative members joined them, it increased the partisanship of the vote, thus increasing Binder score while the average DW-NOMINATE became more negative.

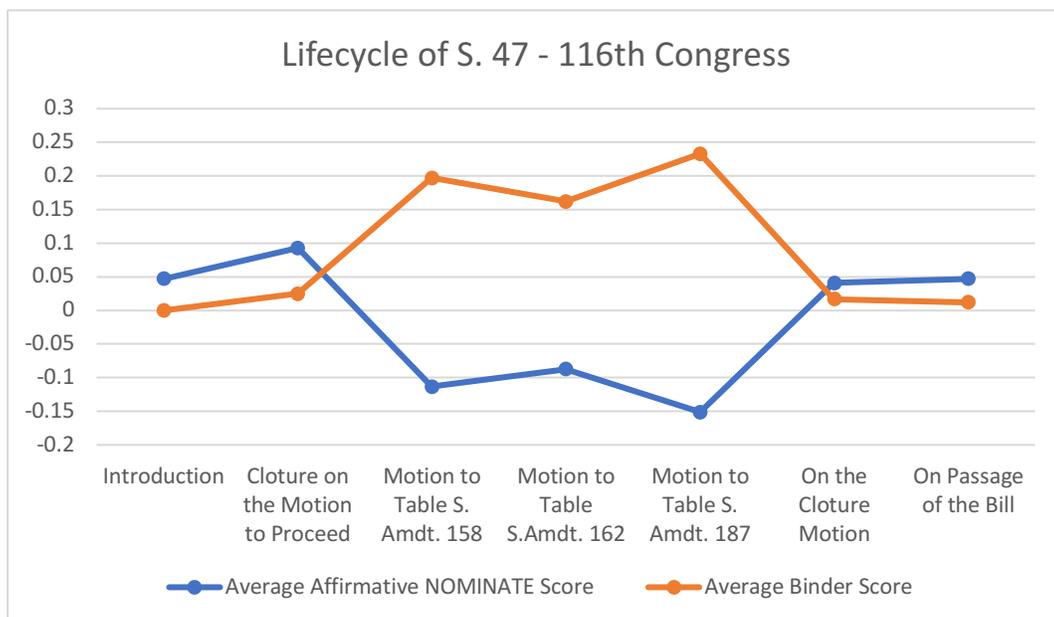


Figure 6

The issue that rises from this model is that it is impossible to compare the legislative lifecycles of all bills on one graph, as some bills garner more (or less) votes than another. Additionally, none of this information accurately reflects the true political content of the legislation in question. For a hypothetical example, imagine a piece of legislation introduced by Senator Mike Lee (R-UT) that would thank military members for their service protecting the United States at home and abroad. This piece of legislation, based solely off Senator Lee's DW-NOMINATE score, would be 0.913, which on the DW-NOMINATE scale is incredibly conservative, but the actual content of the legislation is not partisan.¹⁰⁵ This is problematic for us and skews our data, as we have seen with both National Defense Authorization Acts.

It is necessary for a new formulation to be made to attempt to quantify the partisanship ideology of legislation. What this formulation could be is beyond the scope of this work, but I believe that there is some sort of hybridization necessary between the DW-NOMINATE scores and the Binder scores with proportional weighting playing a necessary role. The ideological continuum discussed by Poole and Rosenthal should still be used, but perhaps instead of looking at a history of roll-call voting, we look instead at a history of party support in both chambers.¹⁰⁶ Such an endeavor would be a painstaking and slow process but could be the next big step in understanding partisanship and ideology.

¹⁰⁵ Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet (2021). Voteview: Congressional Roll-Call Votes Database. <https://voteview.com/>

¹⁰⁶ Keith T. Poole and Howard Rosenthal, *Ideology and Congress*, (Transaction Publishers: New Brunswick, New Jersey, 2009), 1-31

CHAPTER THREE

Political Pressures on the Modern Senator Regarding the Filibuster

Introduction

The preceding chapters have covered the general academic arguments surrounding the filibuster and an empirical analysis of its effectiveness at moderating legislation within the Senate. While briefly touched on in Chapter I, the actual politics of the filibuster still must be investigated to successfully guide us on our overall assessment of the tactic. Additionally, as discussed in Chapter II, we must factor in political incentives and have a knowledgeable understanding of Congressional logic to create a well-informed stance on the filibuster in modernity.

To do this, we will need to first establish why Senators vote the way they do, drawing in from sources that study Congressional action in general and sources that establish general senatorial influence, echoing many sentiments discussed in Chapter I. Additionally, we will note some of the more outstanding examples of “flagrant legislative obstruction” in American history in order to give a sufficient character background, and we will cover a brief history of the rules that currently constrain debate.¹⁰⁷ From this foundation, we will use pending legislation in the 117th Congress as a case study, scrutinizing contemporary arguments from political power players within the Senate. The goal of this breakdown is to find out how both majorities and minorities view and

¹⁰⁷ Franklin Burdette, *Filibustering in the Senate* (Princeton: Princeton University Press, 1940), 5; These particular examples are selected due to their prominence in multiple pieces of academic literature and literature on the history of the Senate as an institution. While an exhaustive list may sound appealing, it is not possible to do so without creating a tome hundreds of pages long and finding a way to quantify the extreme abuse of the cloture vote in the modern Senate, which has become the norm instead of the exception.

deal with the filibuster, and from there make an assessment as to the benefits and drawbacks of its use.

Congressional Logic — A General Understanding

There have been a great number of works dedicated to understanding why Members of Congress vote the way that they do, but there is a consensus among scholars that Members have an unifying motivating factor for their votes — reelection. In *Congress: The Electoral Connection*, David Mayhew argues that Members of Congress solely seek reelection and that many of them function as career politicians.¹⁰⁸ Cain, Ferejohn, and Fiorina all support this mindset by placing emphasis on the personal vote and how individual constituencies in single-member districts ultimately sway the decision on the member.¹⁰⁹ Other works further cement the mindset of electorally minded Members of Congress, proving that “To congressional candidates, an election is about local matters—the variables they can control.”¹¹⁰ Such local matters can only be solved with votes and Congressional action (or inaction). Therefore, the specter of reelection looms large over every individual Member in Congress.¹¹¹

For the purposes of this work, we must operate under this assumption. Pundits may refer to this stance as one that is overly cynical, however, it is the best position for us to operate from. If we attempt to factor in other motivators such as principle, we find ourselves in an overly complicated exercise of game theory that would take years to

¹⁰⁸ David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974).

¹⁰⁹ Bruce Cain, John Ferejohn, and Morris Fiorina, *The Personal Vote: Constituency Service and Electoral Independence* (Cambridge, MA: Harvard University Press, 1987).

¹¹⁰ Benjamin Ginsberg and Kathryn Wagner Hill, *Congress: The First Branch* (New Haven, CT: Yale University Press, 2019)

¹¹¹ R. Douglas Arnold, *The Logic of Congressional Action* (New Haven, CT: Yale University Press, 1990).

unravel and understand. While many of the following assessments will include references to principle that are held sincerely by their advocates, the underlying motivation of being reelected, albeit for altruistic or cynical reasons, must be understood to be the basis of all Senatorial action. Historical influences, which we shall discuss next, only come second to the thirst for reelection.¹¹²

The Birth of the World's Greatest Deliberative Body

In the *Notes of Debates in the Federal Convention of 1787*, James Madison catalogues the ongoing strife between the delegates of the larger states and smaller states, with the larger states wanting a proportional legislature to benefit themselves and the smaller states wanting an equal legislature for the same reason.¹¹³ At the suggestion of Benjamin Franklin, a compromise was reached wherein the legislature was bicameral; the House of Representatives for the larger states based on population, thus representing the people, and the Senate for the smaller states with equal representation, thus representing the state as a whole.¹¹⁴ Coupling the idea of the state being recognized as one unit with the age requirements and indirect election of Senators, the framers of the Constitution managed to create a chamber that was a democratic aristocracy. The writer of *Federalist 62*, which has been attributed to both Madison and Alexander Hamilton, stresses this point when discussing the requirements for a Senator, noting that:

¹¹² Outliers such as those not running for reelection are excluded from this generalization. Additionally, it is in the best sense to operate without the assumption of some Senators acting out of principle or personal political philosophy in favor of the cynical reelection bid largely for the ease of broad analysis and because works such as *Politics or Principle* and *Congress: The Electoral Connection* successfully use the same premise in their research.

¹¹³ James Madison, *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, (Athens, OH: Ohio University Press, 1985).

¹¹⁴ *Ibid.*

The propriety of these distinctions is explained by the nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages...¹¹⁵

With the Senate acting as the *de facto* aristocracy, its smaller size also served as a check on the democratic House, which the author of *Federalist 62* feared may pass “improper acts of legislation” as it was more subject to the whims of the people while the Senate was the chamber of the various States.¹¹⁶ This foundational background is a necessary component to understanding the filibuster, as the Framers truly envisioned the Senate as a deliberative body of the most esteemed statesmen representing the States as full units.¹¹⁷

John C. Calhoun: Founder of the Filibuster

The history of the filibuster cannot be discussed without first bringing in its founder and patron saint, John C. Calhoun. Born on March 18, 1782 in the boondocks of South Carolina, John Caldwell Calhoun would serve in the House of Representatives, the Senate, the President’s cabinet (Secretary of War), and as Vice President of the United States.¹¹⁸ Calhoun was at best an ambitious man and at worst a power-hungry tyrant. While he did not find power in the national sphere, Calhoun found it in the sectional divisions arising from the issue of slavery in the nineteenth century, decrying that the majority of states were trampling over the rights of the southern slave-holding states, thus

¹¹⁵ James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (Dublin, Ohio: Coventry House Publishing, 2015), 302.

¹¹⁶ *Ibid.*, 303.

¹¹⁷ As mentioned in Chapter I, the addition of the 17th Amendment to the Constitution has created more fertile ground for filibusters, as the “esteemed statesmen” that were brought up from the legislatures have been replaced by whomever can get the most votes from their state’s constituency regardless of their virtue. Though the filter of the state legislature has been removed, the idea of representing an entire sovereign state remains to this day.

¹¹⁸ Richard N. Current, *John C. Calhoun*, (New York, NY: Washington Square Press, 1966).

propagating a philosophy of nullification.¹¹⁹ In layman’s terms, the concept of nullification is that a state may deem certain acts of Congress to be unconstitutional through extra-judicial proceedings in the individual state’s legislature and declare it null and void.¹²⁰ In his speech on states’ rights and nullification, Calhoun states that:

wherever the majority of a people becomes the advocate of high taxes, and profuse appropriations and expenditures, there the despotic power is already, in fact, established, and liberty virtually lost,—be the form of government what it may; and experience has proved that the transition from this stage to the absolute power of a single individual, is certain and rapid;—and that it can only be arrested by the interposition of some high power out of the ordinary course.¹²¹

His speech continues the line of thinking that it is the role of the minority to exercise its “sovereignty” to nullify the wishes of the majority, thus formatting what some believe to be the underlying philosophy of the modern filibuster.¹²²

In addition to establishing the underlying philosophy of the filibuster, Calhoun was part of the first two filibusters in the history of the Senate, the removal of the Senate printers of the *Congressional Globe* and the 1841 bank bill which would have created a Bank of the United States.¹²³ Burdette notes that the first filibuster was a “prolonged and acrimonious contention, relevant to the subject but spun out by the Democrats through

¹¹⁹ Richard N. Current, *John C. Calhoun*, (New York, NY: Washington Square Press, 1966).

¹²⁰ Calhoun, John C. “States Rights and Nullification.” States Rights & Nullification, August 2017, 193. <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip.shib&db=f5h&AN=21212961&site=ehost-live&scope=site>.

¹²¹ Ibid.

¹²² Ibid; Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* (New York: Liveright Publishing Corp, 2021); While it can be argued that nullification was the underlying philosophy of the filibuster, it is useless without a procedural avenue to be properly executed. Fortunately for Calhoun, such an avenue was created in 1806 by outgoing Vice President Aaron Burr, who removed the “previous question” rule, which was a way for Senators to wrap-up debate on an issue and moved to the final vote, quite like a proto-cloture vote of the current Senate, though it only required a simple majority of the chamber. See: Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997)

¹²³ Franklin Burdette, *Filibustering in the Senate* (Princeton: Princeton University Press, 1940), 20-25; Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 93-113.

lengthy arguments based on grounds of constitutionality and expediency,” and that such discourse led to a heated exchange between Senator Henry Clay of Kentucky and Senator William R. King of Alabama, wherein King challenged Clay to a duel.¹²⁴ The second debate, while not quite as violent as the first, gives us an articulation of Calhoun’s philosophy taking root. To regain majority control of the chamber and move on to other business, Senator Clay threatened to introduce a measure to limit debate on the bank bill, which Calhoun decried as “a palpable attempt to infringe the right of speech,” and vowed to fight any introduced measure to the bitter end.¹²⁵ While this did not result in the defeat of the legislation in the chamber, it is the first time that we can see organized opposition to a particular piece of legislation that, while not using the tools to their fullest potential, place the Senate minority on the path to legislative obstructionism as seen today.

A Kingfish, a Tiger, and a White Supremacist

While Calhoun was the first to abuse the chamber’s rules on unlimited debate, he is unable to claim direct responsibility for the filibuster that exists in the chamber today. The filibusters currently seen within the Senate came from countless tinkering and maneuvering by politically agile Senators, but it is worthy to discuss the more looming figures of Senate history such as Senators Huey Long of Louisiana, Wayne Morse of Oregon, and Strom Thurmond of South Carolina, all of whom gave soaring speeches that

¹²⁴ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 93-113; Fortunately for both parties involved, the duel never took place. Both were placed under a peace bond by a local magistrate. Franklin Burdette, *Filibustering in the Senate* (Princeton: Princeton University Press, 1940), 20-25

¹²⁵ *Ibid.*

gave way to the stereotype of the filibuster most aptly seen in the film *Mr. Smith Goes to Washington*.

Huey Long was born on August 30, 1893, near Winnfield, Louisiana as the seventh of nine children.¹²⁶ Long was elected as the Railroad Commissioner of Louisiana in 1918, Governor in 1928, and finally elected to the U.S. Senate in 1932, where he was a champion of the common man.¹²⁷ The “Kingfish,” as he was known in Louisiana, was an eloquent and vivacious speaker who, as one biographer put it, “excited people and [...] excited emotions, arousing in his relatively short but explosive career every feeling in the political spectrum—amazement and admiration, disbelief and disgust, love and hatred, and, with many individuals, cold apprehension.”¹²⁸

Long’s Senate career is one filled with frustration and apprehension. While he “believed in the things he said,” the Kingfish was ruthless in his pursuit of power, influence, and prestige.¹²⁹ A rising star of the populist left, he was never afraid to take on some of the biggest power brokers in Washington, even if they were in his own party. The most infamous clash between Long and the Democrats came in the form of Long’s filibuster against President Franklin Roosevelt’s New Deal program, which Long believed to be wholly insufficient.¹³⁰ During debate on an amendment to the National Industry Recovery Act, Long spoke for fifteen and a half hours, and his filibuster consumed eighty-four pages of the *Congressional Record*.¹³¹ Not all of the filibuster was

¹²⁶ Directed by Films for the Humanities & Sciences, Infobase, and Public Broadcasting Service, 1985, *Huey Long*, Infobase, <https://fod.infobase.com/PortalPlaylists.aspx?wID=107557&xtid=44138>.

¹²⁷ Ibid.

¹²⁸ T. Harry Williams, *Huey Long*, (New York, NY: Alfred A. Knopf, Inc, 1969), 4.

¹²⁹ Ibid., 45.

¹³⁰ Directed by Films for the Humanities & Sciences, Infobase, and Public Broadcasting Service, 1985, *Huey Long*, Infobase, <https://fod.infobase.com/PortalPlaylists.aspx?wID=107557&xtid=44138>.

¹³¹ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 142-146.

topical to the subject at hand, which was a reconsideration of an amendment requiring that presidential appointees who made over \$4,000 per annum receive Senate approval, and some of it was nakedly personal.¹³² During the course of the filibuster, Long would invoke the imagery of government officials stealing from hard-working men to enrich themselves, give detailed commentary on the Constitution, and provide the Senate with his personal recipes for oysters and “potlikker.”¹³³ A showman like no other in Senate history, Long cast an incredible shadow over the filibuster even after his death by assassination on September 10, 1935, at the age of forty-two, but soon another would rise to surpass even the Kingfish’s longest tirade.¹³⁴

Wayne Morse was born on October 20, 1900, in Madison, Wisconsin.¹³⁵ Morse grew up as a farmer before attending school, where he was an intelligent and talkative student who favored classes of ideas more than classes of rules and regulations.¹³⁶ At the University of Wisconsin, he was a prominent orator and activist, which he turned into fuel for his pursuit of a master’s of speech, then a law degree at the University of Minnesota, finally culminating in a doctorate of in law at Columbia University.¹³⁷ His political notoriety was fueled by an appointment to the National War Labor Board by President Roosevelt where he stood strongly by his principles and fought all the other members of the board when they wanted to keep an iron grip on the wages of striking

¹³² Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 142-146.

¹³³ Ibid.

¹³⁴ T. Harry Williams, *Huey Long*, (New York, NY: Alfred A. Knopf, Inc, 1969), 876.

¹³⁵ Mason Drukman, *Wayne Morse: A Political Biography*, (Portland, Oregon: Oregon Historical Society, 2004), 11-34.

¹³⁶ A. Robert Smith, *The Tiger in the Senate: A Biography of Wayne Morse*, (Garden City, NY: Doubleday and Company, 1962), 22-24.

¹³⁷ Ibid.

workers.¹³⁸ Morse would go on to further his political experience by serving on multiple advisory boards and government commissions before being elected to the United States Senate in 1944.¹³⁹

While in the Senate, Morse was regarded as the “Tiger” of the Senate, eviscerating ideas and policies that were antithetical to his beliefs.¹⁴⁰ His longest filibuster was waged against the “Title to Certain Submerged Lands” legislation, where he spoke for an astounding twenty-two hours and twenty-six minutes.¹⁴¹ During the course of this filibuster, the Tiger took on multiple subjects, most notably on the concept of the filibuster itself, where he noted that:

[This filibuster] is not yet a type of filibuster whereby its proponents and participants are taking the position that, come what may, they will do what they can to prevent the pending issue from ever coming to a vote. That is one kind of filibuster. That is the extreme filibuster. That is a filibuster in which a group of men in the Senate of the United States, representing a minority, take the position, “We will talk round the clock as many days, weeks, and months as necessary, as long as we have the manpower to do it, in order to prevent a vote from ever occurring on a given bill.” That, I think, is the filibuster in its most evil form. That is the ultimate of filibuster.¹⁴²

Morse later goes on to discuss the need for majority rule in the Senate and the need to break filibusters, though, he concedes, filibusters can go both ways—for the majority and against the majority.¹⁴³ He also discusses how the purpose of a principled filibuster is to educate the public on what precisely is going on in legislation and to persuade the

¹³⁸ A. Robert Smith, *The Tiger in the Senate: A Biography of Wayne Morse*, (Garden City, NY: Doubleday and Company, 1962), 26.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*, 31-53.

¹⁴¹ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 148.

¹⁴² Senator Morse, speaking on S. J. Res. 13, on April 24, 1953, 83rd Congress, 1st sess., *Congressional Record* 99, pt. 3: 3750-3751.

¹⁴³ *Ibid.*

American people and their representatives in the Senate to change their minds, of which he said, “It is intellectual honesty for a man to be willing to change his opinion when the presentation of new facts or a change in conditions calls for a change in opinion.”¹⁴⁴

It is fair to consider the filibuster on the bill to be one quite different than those of Senator Long. While Senator Long certainly had beliefs he held sincerely, he did not engage in debate in good spirit like Senator Morse, who wished not only to educate the public on the legislation at hand but also decry the evils of the filibuster in the wrong hands. He wished to warn the people of the unbridled filibuster and the havoc it would wreck on the Senate, and he wished to highlight the horrors that extended debate, in the wrong hands, could propagate disinformation and hatred throughout the nation. Unfortunately for Morse, the filibuster would become just that, but before his worst nightmare came to fruition, it was to fall into the hands of a man who would spread hatred across the nation a mere four years after his speech.

James Strom Thurmond was born on December 5, 1902, as the second of six children.¹⁴⁵ An intelligent boy, Strom performed well in school and even had time to pick up various odd jobs afterward to grow his savings, so much so that he had an impressive sum of \$600 saved by the time he was fifteen.¹⁴⁶ After completing his public schooling, Thurmond went to the Clemson Agricultural College (now Clemson University) where he was a member of the cadet corps, Calhoun Literary Society, and track team.¹⁴⁷

¹⁴⁴ Senator Morse, speaking on S. J. Res. 13, on April 24, 1953, 83rd Congress, 1st sess., *Congressional Record* 99, pt. 3: 3763.

¹⁴⁵ Joseph C. Ellers, *Strom Thurmond: The Public Man* (Orangeburg, South Carolina: Sandlapper Publishing, 1993), 7.

¹⁴⁶ *Ibid.*, 8; Adjusted for inflation, the sum of \$600 in 1917 would be equivalent to approximately \$12,660 in 2021 dollars. For more information, see: U.S. Bureau of Labor Statistics, “CPI Inflation Calculator,” https://www.bls.gov/data/inflation_calculator.htm, Accessed November 4, 2021.

¹⁴⁷ Joseph C. Ellers, *Strom Thurmond: The Public Man* (Orangeburg, South Carolina: Sandlapper Publishing, 1993), 8-10.

Following a period of working as an educator, he was elected as Superintendent of Edgefield County and later set his sights on higher political office, but in order to get there he would first study law under his father and then pass the bar in a tie for the best score.¹⁴⁸ After completing the bar, Strom practiced law with his father and subsequently served as a state senator in 1932, a Purple-Heart D-Day veteran, governor of South Carolina, and eventually the U.S. Senate.¹⁴⁹

Thurmond in the Senate was, in many ways, John C. Calhoun reincarnated. An ardent supporter of segregation and the preservation of white supremacy over African-Americans, he introduced legislation in the wake of the *Brown v. Board of Education* decision to prevent the Supreme Court from being able to hear racial cases in favor of keeping them at the more localized, and therefore more segregationist, district courts.¹⁵⁰ He also worked to craft legislation that would rid organizations of their tax-exempt status if they were not party in a lawsuit they originated, which was a thinly-veiled attack on the work of the NAACP.¹⁵¹ His most famous attack against civil rights, however, came in the form of his 24 hour and 18 minute filibuster against the Civil Rights Act of 1957.¹⁵² Thurmond veiled his contempt for African-Americans in the same way John C. Calhoun did, which is the argument for the rights of the states and the preservation of federalism.

¹⁴⁸ Joseph C. Ellers, *Strom Thurmond: The Public Man* (Orangeburg, South Carolina: Sandlapper Publishing, 1993), 12-14.

¹⁴⁹ Ibid.; U.S. Senate, "Strom Thurmond: A Featured Biography,"

https://www.senate.gov/senators/FeaturedBios/Featured_Bio_Thurmond.htm, Accessed November 4, 2021

¹⁵⁰ Joseph C. Ellers, *Strom Thurmond: The Public Man* (Orangeburg, South Carolina: Sandlapper Publishing, 1993), 170; Interestingly, Thurmond was also a vocal advocate for the rights of women and supported numerous measures to enshrine equal rights for women. Ibid.; Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 148.

¹⁵¹ Ibid. 172

¹⁵² Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 149.

His main issue with the Civil Rights Act of 1957 was charged by the integration of the schools in Little Rock, Arkansas, and he fueled that anger into a staunch opposition of civil rights being applied to areas outside of voting rights and then support of sending all cases regarding civil rights to jury trial, which would have culturally supported segregation.¹⁵³ During his filibuster, Thurmond focused entirely on the legislation at hand, citing arguments in favor of the trial by jury over decision by appointed judges and also vehemently decrying the creation of a Commission on Civil Rights as an egregious form of federal overreach into areas that should be managed by the states.¹⁵⁴

It was these men who stand as just some of the giants of the filibuster in Senate history, and there are countless others who engaged in extended debate for the purposes of delaying or attempting to defeat legislation. From Long's humorous quips to Morse's moral indignation, to Thurmond's invigoration of white supremacy, it can be said without a shred of doubt that the filibuster has been utilized by all types of legislators. While these men were able to talk for as long as they were able, each was brought down and constrained by one rule: Rule XXII, or the cloture rule.

A Little Group of Willful Men

Until 1915, the filibuster and other dilatory tactics were still somewhat rare occurrences, and even when they did happen few succeeded in defeating legislation.¹⁵⁵

During an extended debate on the Wilson administration's ship purchase bill, Senator

¹⁵³ Joseph C. Ellers, *Strom Thurmond: The Public Man* (Orangeburg, South Carolina: Sandlapper Publishing, 1993), 184-188.

¹⁵⁴ Senator Thurmond, speaking on H.R.6127, on August 29, 1957, 85th Cong., 1st sess., *Congressional Record* 103, pt. 12:16383-16478

¹⁵⁵ Franklin Burdette, *Filibustering in the Senate* (Princeton: Princeton University Press, 1940)

Reed Smoot of Utah spoke for eleven hours and thirty-four minutes uninterrupted and the bill at hand was debated for thirty-three days and caused multiple appropriation bills to fail.¹⁵⁶ In frustration with the Senate, the *New York Times* published an article calling for the Democratic majority to “set the Senate free” and introduce a cloture motion to curtail filibustering.¹⁵⁷ Unfortunately for the unattributed author, such a rule would not be introduced and secured in the Senate until 1917 when, after the sinking of two American merchant ships by German submarines, a bill to arm such vessels was filibustered by an incredibly determined minority.¹⁵⁸ As time to debate the bill was dwindling due to the constitutional constraints of Congressional adjournment, opponents wore on with their objects, speaking for hours and eating up as much time as possible until the Senate clock struck the bill’s death toll at noon on March 4, 1917.¹⁵⁹

President Wilson was enraged that these few Senators would hold up such important business, regardless of their minority beliefs. In a scathing response to this action, Wilson wrote:

Although as a matter of fact, the nation and the representatives of the nation stand back of the Executive with unprecedented unanimity and spirit, the impression made abroad will, of course, be that it is not so and that other governments may act as they please without fear that this government can do anything at all. We cannot explain. The explanation is incredible. The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. *A little group of willful men*, representing no opinion but their own, have rendered the great government of the United States helpless and contemptible. The remedy? There is but one remedy. The only remedy is that the rules of the Senate shall be so altered that it can act. The country can be relied upon to

¹⁵⁶ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 118.

¹⁵⁷ “Yes, Set It Free,” *New York Times*, January 30, 1915, accessed October 26, 2021, https://timesmachine.nytimes.com/timesmachine/1915/01/30/100135905.pdf?pdf_redirect=true&ip=0

¹⁵⁸ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 118-123.

¹⁵⁹ *Ibid.*

draw the moral. I believe that the Senate can be relied on to supply the means of action and save the country from disaster.¹⁶⁰

While Wilson had called the Senate into a special session to address a treaty, Senators were rightly preoccupied with the President's demands. Thomas W. Riley notes in his book, *A Little Group of Willful Men*, that most of those senators were weary to put restrictions on the filibuster given that each had used it in some form or fashion over the years, but the public pressure was strong, and Wilson was even stronger, demanding that the rules would need to be revised before he would call the special session, thus sealing the fate of the change.¹⁶¹ The change would come to exist in the formation of Rule XXII, which was introduced as S. Res. 5 on March 8, 1917, and reads as follows:

Resolved, That the Senate shall, from and after its adoption, enforce the following rule, which is hereby adopted:

If at any time a motion, signed by 16 Senators, to bring to a close the debate upon any pending measure is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and upon the ascertainment that a quorum is present the Presiding Officer shall, without debate, submit to the Senate by an aye-and-nay vote the question:

“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 a two-thirds vote of those voting, then said measure shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the pending measure, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in

¹⁶⁰ Woodrow Wilson, as quoted in Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 122-123.

¹⁶¹ Thomas W. Riley, *A Little Group of Willful Men*, (Port Washington, NY: Kennikat Press, 1975), 147-48.

order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.¹⁶²

The “Martin Resolution,” as this came to be known, was passed with a vote of 76-3.¹⁶³ Now with a rule to close off debate, the Senate was able to proceed to the pressing issues of the day with the approval of the President and the public. The rule, however, would not be invoked for the first until November 15, 1919, to end a fifty-five day debate on the Treaty of Versailles, and a mere four times total from 1919 through 1962.¹⁶⁴ Between 1949 and 1986, Rule XXII was amended a total of five times, as showcased in Table 4.¹⁶⁵ These changes were brought about for varying reasons, many of which have no real influence on the current state of the filibuster. The current state is far more influenced by the decision that, at the time, made filibusters less annoying, but became a fertile ground for ones more silent and far deadlier.

¹⁶² U.S. Congress, Senate, Committee on Rules and Administration, *Senate Cloture Rule*, report prepared by the Congressional Research Service, 112th Cong., 1st sess., 2011, S. Prt. 112-31, 186.

¹⁶³ *Ibid.*

¹⁶⁴ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 124-125.

¹⁶⁵ U.S. Congress, Senate, Committee on Rules and Administration, *Senate Cloture Rule*, report prepared by the Congressional Research Service, 112th Cong., 1st sess., 2011, S. Prt. 112-31; The current iteration of Rule XXII can be found in the Appendix.

Table 4 – Amendments to Rule XXII

Year	Amendment Content
1949	<ul style="list-style-type: none"> – Cloture raised to two-thirds of entire Senate membership – Cloture may be applied to procedural motions, except motions to consider changes in Senate Rules
1959	<ul style="list-style-type: none"> – Cloture lowered to two-thirds of senators present and voting – Cloture may be applied to motions to consider changes in Senate rules
1975	<ul style="list-style-type: none"> – Cloture lowered to three-fifths of Senate membership – Two-thirds of senators present and voting for motions to consider changes in Senate rules
1979	<ul style="list-style-type: none"> – Rule XXII amended to cap post-cloture debate at 100 hours
1986	<ul style="list-style-type: none"> – Rule XXII amended to reduce post-cloture debate to 30 hours

Two Tracks and an Atomic Bomb

While cloture could be invoked to end debate on an issue and move on, filibusters would often take up a significant amount of Senators precious time since only one piece of legislation could be considered at a time.¹⁶⁶ This was changed in the early 1970’s by Majority Leader Mike Mansfield and Majority Whip Robert C. Byrd when they, with the consent of minority party leadership, introduced the concept of a “two-track” legislative system that permitted the Senate “to have two or more pieces of legislation pending on the floor almost simultaneously by designating specific periods during the day when each measure or matter would be considered.”¹⁶⁷ In theory, this makes it significantly easier to get business done while also preserving the filibuster. While it seems like this would be

¹⁶⁶ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 203.

¹⁶⁷ *Ibid.*

an ideal compromise, it gave rise to the “stealth filibuster” in which a Senator only needs to indicate to the leadership the *intent* to filibuster legislation, thus forcing the leadership to seek out a cloture motion.¹⁶⁸ In practice, this gave rise to the *de facto* supermajority requirement to pass legislation in the Senate, and also explains in part the significant rise in cloture motions in the modern Senate.¹⁶⁹

While the two-track system was an innovative approach to conducting business on the Senate floor and the stealth filibuster was an insidious interpretation of that approach, it found its match in Majority Leader Harry Reid (D-NV) in 2013 with the introduction of the dramatically named “nuclear option,” due to extreme obstruction from the GOP on judicial nominees, so much so that it was preventing President Obama from filling important vacancies.¹⁷⁰ By using this option, the majority would be able to invoke cloture via a simple majority by establishing a new precedent. Generally speaking, precedents in the Senate are established by way of the following:

Any ruling by the Chair in response to a point of order made by a Senator is subject to appeal. If no appeal is taken, the ruling of the Chair stands as the judgement of the Senate and becomes precedent for the guidance of the Senate in the future.... [If there is an appeal, then unless] the Chair is supported by a majority vote of the Senate, the decision of the Chair is overruled. This decision of the Senate becomes a precedent for the Senate to follow in its future procedure until altered or reversed by a subsequent decision of the Chair or by a vote of the Senate.¹⁷¹

¹⁶⁸ Catherine Fisk and Erwin Chemerinsky, “The Filibuster,” *Stanford Law Review* Vol. 49, no. 2 (January 1997): 181-254, accessed February 15, 2021, <https://www.jstor.org/stable/1229297>

¹⁶⁹ U.S. Senate., 2021, *Cloture Motions*, Accessed May 15, 2021, <https://www.senate.gov/legislative/cloture/clotureCounts.htm>

¹⁷⁰ Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* (New York: Liveright Publishing Corp, 2021), 111-126; It is necessary to lend credence to the appearance of Democratic “court packing” by the Obama administration as a potential basis for objection to the appointment of judicial nominees.

¹⁷¹ Floyd M. Riddick and Alan S. Frumin, *Senate Procedure: Precedents and Practices*, (Washington, DC: U.S. Government Printing Office, 1992), 145.

Adam Jentleson, former deputy Chief of Staff for Senator Harry Reid, recalls the employment of the nuclear option on November 21, 2013, in his book *Kill Switch* as follows:

He [Senator Reid] brought up a vote on a nomination and asked the presiding officer, Senator Patrick Leahy, for a ruling on whether it took a supermajority to invoke cloture. Leahy ruled that it did, since that is what Senate rules stated. Reid then called a vote to overturn the ruling of the chair and it passed, 52 to 48.¹⁷²

While the “Reid Precedent” only affected judicial nominees (apart from Supreme Court nominees), it was later expanded in 2017 by Majority Leader Mitch McConnell (R-KY) to include Supreme Court nominees so that President Donald Trump’s nominee, Neil Gorsuch, could be confirmed by a simple majority vote.¹⁷³ This leaves only legislation subject to the supermajority requirement today, and once again in the wake of extreme obstructionism, calls are being renewed to finally abolish the filibuster once and for all.

The Present Situation

As it was in the 1950s and 1960s, voting rights are again at the forefront of political focus. At the time of writing, nineteen states have passed laws that restrict the right to vote, ranging from limiting the number of ballot boxes to expanding voter

¹⁷² Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* (New York: Liveright Publishing Corp, 2021), 119.

¹⁷³ Ibid.; Seung Min Kim, Burgess Everett, and Elana Schor, “Senate GOP goes “nuclear” on Supreme Court Filibuster,” *Politico*, April 6, 2017, Accessed November 4, 2021, <https://www.politico.com/story/2017/04/senate-neil-gorsuch-nuclear-option-236937>; Democrats objected to the move by McConnell due to the refusal for the Republican-led Senate to hold hearings on Supreme Court nominee Merrick Garland after the death of Justice Scalia in the twilight of President Obama’s term. McConnell, citing the idea that a confirmation during an election year would be an affront to the desires of the voter was later overruled by McConnell himself when the Senate confirmed Amy Coney Barrett to the Supreme Court in the twilight of the Trump administration. See: Barbara Sprunt, “Amy Coney Barrett Confirmed to Supreme Court, Takes Constitutional Oath,” *NPR*, October 26, 2020, accessed December 5, 2021, <https://www.npr.org/2020/10/26/927640619/senate-confirms-amy-coney-barrett-to-the-supreme-court>.

purges.¹⁷⁴ Data suggests that these types of laws have a negative impact on both minority turnout and Democratic/liberal turnout, while not significantly affecting white turnout and Republican/conservative turnout.¹⁷⁵ To counteract these particular laws, Congressional Democrats have introduced ambitious legislation such as the *For the People Act of 2021* (H.R. 1), the *John R. Lewis Voting Rights Advancement Act of 2021* (S. 4), and the *Freedom to Vote Act* (S. 2747).¹⁷⁶ The breadth of this legislation includes (but is not limited to) national mail-in voting standards, nonpartisan redistricting commissions, campaign finance overhaul, restoration of preclearance with the Justice Department that was gutted in *Shelby County v. Holder* (2013), and establishing Election Day as a federal holiday.¹⁷⁷

Since the introduction of this legislation, Senate Republicans have blocked them all by employing the stealth filibuster to prevent even the consideration of the legislation.¹⁷⁸ The employment of this stratagem, combined with the political pressures of voter suppression laws, has renewed calls for the abolition of the filibuster via the nuclear option in opinion editorials across the country.¹⁷⁹ Senate Democrats are largely unified on

¹⁷⁴ “Voting Laws Roundup: October 2021,” *Brennan Center for Justice*, October 4, 2021, accessed November 4, 2021, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

¹⁷⁵ Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, “Voter Identification Laws and the Suppression of Minority Votes,” *Journal of Politics* 79, no. 2, 2016, 363-379.

¹⁷⁶ U.S. Congress, House, *For the People Act of 2021*, H.R. 1, 117th Cong., 1st sess., passed House March 3, 2021, www.congress.gov/117/bills/hr1/BILLS-117hr1eh.pdf; U.S. Congress, Senate, *John R. Lewis Voting Rights Advancement Act of 2021*, S. 4, 117th Cong., 1st sess., placed on Senate calendar October 6, 2021, <https://www.congress.gov/117/bills/s4/BILLS-117s4pcs.pdf>; U.S. Congress, Senate, *Freedom to Vote Act*, S. 2747, 117th Cong., 1st sess., placed on Senate calendar September 15, 2021, <https://www.congress.gov/117/bills/s2747/BILLS-117s2747pcs.pdf>.

¹⁷⁷ *Ibid.*; “Shelby County v. Holder.” Oyez. Accessed November 5, 2021. <https://www.oyez.org/cases/2012/12-96>.

¹⁷⁸ Cloture Motion on S. 2747, 117th Cong., 1st sess., *Congressional Record* 167 (October 20, 2021): S 7107- S 7108; Cloture Motion on S. 4, 117th Cong., 1st sess., *Congressional Record* 167 (November 3, 2021): S 7701; There has not been a cloture motion filed on H.R. 1 as of the date of writing.

¹⁷⁹ See: Harry Reid, “Harry Reid: The Filibuster Is Suffocating the Will of the American People,” *New York Times*, August 12, 2021, accessed November 4, 2021, <https://www.nytimes.com/2019/08/12/opinion/harry-reid-filibuster.html>; Damon Winter, “For Democracy

the need to change the filibuster with two notable holdouts, Senators Kyrsten Sinema (AZ) and Joe Manchin, III (WV).¹⁸⁰ Writing for the *Washington Post*, Sinema explains

her position rests on the concept of bipartisan moderation of legislation, noting:

My support for retaining the 60-vote threshold is not based on the importance of any particular policy. It is based on what is best for our democracy. The filibuster compels moderation and helps protect the country from wild swings between opposing policies.... Bipartisan policies that stand the test of time could help heal our country's divisions and strengthen Americans' confidence that our government is working for all of us and is worthy of all of us. 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.¹⁸¹

Senator Manchin uses similar logic to defend the filibuster, though his writing and discussion on the subject is more flexible than Sinema's. Writing for the *Washington Post*, Manchin states:

The filibuster is a critical tool to protecting [rural/small state] input and our democratic form of government. That is why I have said it before and will say it again to remove any shred of doubt: There is no circumstance in which I will vote to eliminate or weaken the filibuster. The time has come to end these political games, and to usher a new era of bipartisanship where we find common ground on the major policy debates facing our nation.... Working legislation through regular order [and therefore subject to the filibuster, unlike budget reconciliation] in the Senate prevents drastic swings in federal policy making.... If the filibuster is eliminated or budget reconciliation becomes the norm, a new and dangerous precedent will be set to pass sweeping, partisan legislation that changes the direction of our nation every time there is a change in political control. The

to Stay, the Filibuster Must Go," *New York Times*, March 11, 2021, accessed November 4, 2021, <https://www.nytimes.com/2021/03/11/opinion/us-filibuster-senate.html>; F.H. Buckley, "Conservatives Should Oppose the Filibuster," *Wall Street Journal*, June 27, 2021, accessed November 4, 2021, <https://www.wsj.com/articles/conservatives-should-oppose-the-filibuster-11624823307>.

¹⁸⁰ The significance of having two dissenters is that, at the time of writing, the Senate is evenly divided with Vice President Kamala Harris (D) giving the tie-breaking vote, and therefore majority control, to the Democrats.

¹⁸¹ Kyrsten Sinema, "Opinion: Kyrsten Sinema: We have more to lose than gain by ending the filibuster," *Washington Post*, June 21, 2021, accessed July 4, 2021, <https://www.washingtonpost.com/opinions/2021/06/21/kyrsten-sinema-filibuster-for-the-people-act/>

consequences will be profound — our nation may never see stable governing again.¹⁸²

There are two main problems with this position, the first is that there is no empirical evidence to support that the filibuster leads to more moderate legislation, and the second is that both positions abdicate historical precedent and ignore the data showing that the filibuster leads to an ineffective governing body.

As discussed in Chapter II, there is no evidence to suggest that the filibuster begets bipartisan compromise.¹⁸³ The second problem is more complicated. As we have previously noted, the Senate was able to function as a governing body for 111 years between the removal of the previous question rule and the introduction of cloture.¹⁸⁴ Sinema’s “guardrails” argument and Manchin’s invocation of the Framers and the rights of small states are just more palatable versions of the arguments used by Calhoun and Thurmond. The Framers of the Constitution were not concerned with the rules of the Senate, and they were staunch supporters of majority rule, as evidenced in our discussion of *Federalist 10*, 22, and 58.¹⁸⁵ The filibuster was not part of the original Senate, and therefore has no standing in the argument citing Framers’ intent. Additionally, Senators Sinema and Manchin note how the filibuster was used for favorable outcomes, essentially

¹⁸² Joe Manchin, “Opinion: Joe Manchin: I will not vote to eliminate or weaken the filibuster,” *Washington Post*, April 7, 2021, accessed July 4, 2021, https://www.washingtonpost.com/opinions/joe-manchin-filibuster-vote/2021/04/07/cdbd53c6-97da-11eb-a6d0-13d207aadb78_story.html.

¹⁸³ There is always the chance that this theory can be disproven, and I do not wish to represent the argument in bad faith. Should a proper test for the partisanship of legislation be developed, then this claim will need to be revisited, though with the ever-increasing number of cloture votes I find it highly unlikely that there will be any evidence of statistical significance. Additionally, one can argue that the voting rights legislation is an example of legislation becoming more bipartisan over time, it is important that due to political headwinds and crises this legislation is the exception and not the rule, since none of the bills have been able to overcome the filibuster.

¹⁸⁴ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997)

¹⁸⁵ James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (Dublin, Ohio: Coventry House Publishing, 2015).

arguing that where you stand depends on where you sit. I will concede that they are correct in suggesting that the filibuster has been used for a glorious purpose, such as that championed by Senator Morse and suggested Frances E. Lee and Bruce I. Oppenheimer when they show that:

one party has won a share of seats disproportionate to its national electoral success because of its success in smaller-population states.... Even when it has not [been decisive in determining Senate control], the increased number of seats held by the minority party as a result of Senate apportionment is particularly meaningful in an institution in which the minority party, and each individual senator, enjoys a great deal of power.¹⁸⁶

The above quote suggests that it is possible for a minority of Senators that represent more people than the smaller state majority to filibuster legislation that could be detrimental to the nation, but the converse is also true wherein a minority of Senators representing a minority of people can filibuster a majority of Senators representing a majority of the people. While it may be suggested, and by no means incorrectly, that this was the intent of making the Senate intentionally counter-majoritarian, the framers did this without indicating that it would take a supermajority to pass legislation.¹⁸⁷

Senators Sinema and Manchin also ignore the elephant in the chamber by acting like the filibuster has not been used for dilatory and diabolical reasons like those filibusters conducted in the civil rights era and by acting like there hasn't been an exponential increase in filibusterism in the last fourteen years.¹⁸⁸ Their suggestion that bipartisanship is the only way to move forward is the very case of the gridlock that they

¹⁸⁶ Frances E. Lee and Bruce I. Oppenheimer, *Sizing Up the Senate: The Unequal Consequences of Equal Representation*, (Chicago, IL: University of Chicago Press, 1999), 122.

¹⁸⁷ James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (Dublin, Ohio: Coventry House Publishing, 2015).

¹⁸⁸ U.S. Senate.,2021, *Cloture Motions*, Accessed May 15, 2021, <https://www.senate.gov/legislative/cloture/clotureCounts.htm>.

suggest would happen with changing majorities. If a simple majority were required to invoke cloture, then more legislation would pass the chamber and the Senate may no longer considered to be the graveyard for legislation. As noted in Chapter II, the 116th Congress had a success rate of 4.35% for Senate legislation overcoming a filibuster.¹⁸⁹ Further expansion of this research shows this success rate to be in the lowest of all Congresses from the 111th and forward.¹⁹⁰ Abolition of the filibuster, or at the very least sweeping reforms such as the talking filibuster or progressively lower cloture votes, suggest that the Senate could become a more efficient body, thus creating more effective government.

Conclusion

Senator Robert C. Byrd (D-WV) called the filibuster the “bane of Senate majority leaders, [a] redoubtable weapon of legislative minorities, target of editors’ and cartoonists’ harpoons, and the object of obloquy and scorn.”¹⁹¹ His summation is accurate, and as we have seen above, the filibuster is mired in controversy. From righteous indignation to defending segregation, the filibuster’s history has spanned the entire scope of ideologies. The spoken filibuster, while annoying, was a chance for Senators to make their case to the people who would hopefully pressure their senators into changing their minds. The frequency of the employment of the stealth filibuster only serves to frustrate not just the majority but the people of the United States when all they

¹⁸⁹ U.S. Senate, “Votes,” (accessed August 20, 2021). https://www.senate.gov/legislative/votes_new.htm;

¹⁹⁰ Ibid.; The success rates range from 15.15% to 4.35%, which further shows the overall inefficiency of the institution as a whole.

¹⁹¹ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 93

see in the Senate is inaction with no debate. The stealth filibuster has changed the “world’s most deliberative body” into nothing more than Washington’s most exclusive country club.

What is the likelihood that things will change? It is the opinion of the author that the answer to the question is: maybe, but not how many would like. Political pressures, while not easily quantifiable, prevent the current Congress from abolishing the filibuster completely. The breadth of pressures we have discussed in this work should speak to that situation. Fortunately, there is also pressure on the opposite side, most notably from a creature of the Senate turned President Joseph R. Biden, Jr. In a televised town hall with Anderson Cooper, President Biden indicated his support for the abolition of the stealth filibuster in favor of the talking filibuster, saying:

It used to be you had to stand on the floor and exhaust everything you had, and you — when — and when you gave up the floor and someone else sought the floor, they had to talk until they finished. You’re only allowed to do it a second time. After that, it’s over; you vote — somebody moves for the vote. I propose we bring that back now, immediately.¹⁹²

President Biden also suggested he would support a carve-out on voting rights legislation and other subjects, thus making some subjects immune to filibusterism.¹⁹³

In summation, there are multiple political pressures factoring on Senators, and even more when it comes to the filibuster. While they are seeking reelection, there is also the storied history of the chamber hanging around many of their necks like an albatross, and the ire of public opinion pushing against them. The current situation regarding voting

¹⁹² “Remarks by President Biden in a CNN Town Hall with Anderson Cooper,” The White House, October 22, 2021, accessed November 4, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/10/22/remarks-by-president-biden-in-a-cnn-town-hall-with-anderson-cooper-2/?utm_source=link.

¹⁹³ Ibid.

rights comes at a pivotal time in our history, much like the civil rights legislation in the 1950s and 1960s did, and we cannot afford to let this legislation go silently in that dark and still night.

CONCLUDING REMARKS

Truthfully, we have only scratched the surface of the filibuster in the United States Senate in the preceding three chapters. Thousands of pages have been written, hours of speeches and remarks have been spoken until the orator is hoarse, but in our quest to understand more, we are constantly reminded of that infamous phrase of Socrates, “I know that I have no wisdom, small or great.”¹⁹⁴ As each layer is peeled back another reveals itself. The preceding three chapters only serve one purpose: to peel back a single layer.

In Chapter I, we began with a brief overview of just what the filibuster is and how it has manifested itself over time. From there, we discussed the constitutionality of the filibuster and conceded that while “Each House may determine the Rules of its Proceedings,” the principle of majoritarianism is supported by the Framers themselves.¹⁹⁵ In *Federalist 22*, Hamilton showcases the issue with supermajority rule and the “tedious delays; continual negotiation and intrigue; [and] contemptable compromises of the public good.”¹⁹⁶ Madison states in *Federalist 58* that in a chamber controlled by a supermajority, “the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority.”¹⁹⁷

Making clear that, while the filibuster is technically constitutional, it would not have support of the Framers, we moved on the concern of efficiency and the filibuster.

¹⁹⁴ Plato, *The Apology* <http://classics.mit.edu/Plato/apology.html>

¹⁹⁵ U.S. Const. I, §5.

¹⁹⁶ James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (Dublin, Ohio: Coventry House Publishing, 2015), 105.

¹⁹⁷ *Ibid.*, 287-288.

The data suggests that the abolition of the filibuster would result in much more legislation being passed, thus making the Senate a more efficient body when it comes to responding to the needs of the nation.¹⁹⁸ Opponents of this argument actually concede that it would allow for more bills to pass but turn the Senate into a smaller version of the House, should they lose their extended debate privileges.¹⁹⁹ This fear is rooted in the belief that the House is an inherently partisan institution, while the existence of the filibuster forces bipartisan compromise in the Senate.²⁰⁰ While it seems like a logical assessment of the situation, it is not grounded in fact, as the Senate operated in a completely different way from the House even when there was a majoritarian way to end debate.²⁰¹

To conclude Chapter I, we discussed potential reforms that could take place in the 117th Congress and beyond. Ranging from complete abolition of the practice to successively lower vote thresholds needed to invoke cloture, academics and politicians alike have debated just how to precisely curtail the abuse of the Senate's unlimited debate rules.

Chapter II attempts to empirically test the notion that the filibuster forces bipartisan compromise, as we noted as a counterargument to the efficiency argument in Chapter I. Before beginning the test, it was necessary to first establish precisely what partisanship is and where it originates. While electoral partisanship is essentially a modern version of tribal groupthink stemming from various sources and life experiences, elected officials are solely focused on their reelection and whatever it will take to ensure

¹⁹⁸ U.S. Senate.,2021, *Cloture Motions*, Accessed May 15, 2021, <https://www.senate.gov/legislative/cloture/clotureCounts.htm>.

¹⁹⁹ Zachary Stokes, *Tyranny of the Minority: Evolution of the Filibuster and Ways to Reform its Usage* (Baltimore: Johns Hopkins University, 2011), 90.

²⁰⁰ Ibid.

²⁰¹ Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington, D.C.: Brookings Institution Press, 1997)

it.²⁰² To ensure reelection, we must look at the tangible evidence that members can bring home to their constituents: votes. These votes also can be used to measure partisanship of a caucus or individual member.

Beginning with the model created by Stuart A. Rice in 1925 that identifies “cohesion” and “likeness,” we found a very basic model of measuring political groupthink that did not account for ideology.²⁰³ By using this model, researchers are forced to track the ideology of the issue themselves, leaving room for error. 50 years after Rice, Keith Poole and Howard Rosenthal established their NOMINATE scores, which are created by a complex series of computations regarding vote history to determine where a member sits on an ideological scale from Liberal to Conservative.²⁰⁴ Their latest version of this measure, DW-NOMINATE, is used frequently to determine how a Member of Congress may vote on a particular issue by political scientists and analysts alike.²⁰⁵

Unfortunately, these models are better predictors and measurements of individual members or pre-defined groups, so we deemed them to be insufficient for our measurement on their own. To attempt to transition to a measurement of partisanship, we needed to bring in some additional support from Sarah A. Binder and Laurel Harbridge.

While Binder’s approach is similar to the Rice model, it uses cosponsor coalitions to

²⁰² Richard Petty and John Cacioppo, *Attitudes and Persuasion: Classic and Contemporary Approaches*, (Dubuque, IA: William Brown Publishers, 1981) as quoted in Steven Greene, “The Social-Psychological Measurement of Partisanship,” *Political Behavior* Vol 24, no. 3, 171-197; David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974); R. Douglas Arnold, *The Logic of Congressional Action* (New Haven, CT: Yale University Press, 1990).

²⁰³ Stuart A. Rice, “The Behavior of Legislative Groups: A Method of Measurement,” *Political Science Quarterly* Vol. 40, no. 1, 60-72.

²⁰⁴ Keith T. Poole and Howard Rosenthal, *Ideology and Congress*, (Transaction Publishers: New Brunswick, New Jersey, 2009), 1-31.

²⁰⁵ Ibid.

determine a partisanship score from 0 (completely bipartisan) to .5 (completely partisan).²⁰⁶ Harbridge's addition to this formulation is a concern for the efficacy of using cosponsor coalitions in measurement, given that members will cosponsor legislation that is never often intended to get off the ground.²⁰⁷

With this warning being heeded, we found the average of DW-NOMINATE scores of members voting on legislation and the Binder score of the same members to determine if there is proof of legislation subject to a filibuster becoming more bipartisan over time. While the data appeared to suggest that bills did become more bipartisanship over time, an analysis of each bill individually coupled with the difference in size between the cosponsorship coalition and the entire Senate rendered the results inconclusive. We noted how future scholars may choose to use this approach as a starting point, and the author wishes to note that he intends to keep tinkering with his design.

After overviewing the academic literature in Chapter I and attempting to measure bipartisanship in Chapter II, we reached the point of needing to assess the political factors surrounding the filibuster. While not in any means an exhaustive list or a proper psychological evaluation, Chapter III covered the political pressures that come with filibusterism. Operating off the establishment that members of Congress are solely motivated by reelection, we were able to identify multiple points of influence that encourage a Senator to filibuster.²⁰⁸

²⁰⁶ Sarah A. Binder, *Stalemate: Causes and Consequences of Legislative Gridlock*, (Brookings: Washington, D.C.), 84-93.

²⁰⁷ Laurel Harbridge, *Is Bipartisanship Dead? Policy Agreement and Agenda-Setting in the House of Representatives* (Cambridge University Press: Cambridge, MA), 25-26.

²⁰⁸ David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974).

The first influential point comes from the creation of the Senate itself and what it was intended to be. The concept of a chamber where the states in the union, regardless of size, are all on equal footing was instrumental in the ratification of the constitution.²⁰⁹ Additionally, as previously mentioned, the Constitution is based on the principle of majoritarianism and not on the abject concept of the supermajority.²¹⁰

From this institutional wellspring there came multiple characters whose quest for power, influence, prestige, and desire to do the right thing trumped all they perused, and to this day their character lives on. Towering figures like John C. Calhoun, Huey Long, Wayne Morse, and Strom Thurmond all cast long shadows over the concept of the filibuster, and without much doubt their influence is still felt today.²¹¹ People still use the same lines of thinking as these men and employ their various dilatory tactics, but often fall short of the giants they impersonate.²¹²

After discussing the ghosts of filibusters past we looked at the precedential history of the chamber to assess how the rules and precedent shaped the filibuster into the standard it is today. We noted the introduction of cloture due to the “little group of willful men” protesting the armed ship bill, and then traced the varying changes throughout the

²⁰⁹ James Madison, *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, (Athens, OH: Ohio University Press, 1985).

²¹⁰ James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (Dublin, Ohio: Coventry House Publishing, 2015), 105.

²¹¹ It is the opinion of the author that Senator Morse struck the balance necessary for a “good” filibuster, should such a concept exist. Morse’s warnings about the abuse of the strategy was prescient and well-meant, but it has gone unheeded since.

²¹² An example of this would be the filibuster conducted against Obamacare by Senator Ted Cruz (R-TX) where he read, in its entirety, *Green Eggs and Ham* by Dr. Seuss. No doubt attempting to take a page from Huey Long’s book, the author believes that the stunt would have been humorous and more in line with what Huey Long did had someone else given the speech; Abby Ohlheiser, “Watch Ted Cruz Read Every Word of 'Green Eggs and Ham' on the Senate Floor,” *The Atlantic*, September 24, 2013, accessed November 4, 2021, <https://www.theatlantic.com/politics/archive/2013/09/watch-ted-cruz-read-every-word-green-eggs-and-ham-senate-floor/310674/>.

years.²¹³ Despite these changes, a change to the way the Senate conducts business on the floor inadvertently opened the door to the stealth filibuster wherein some merely needed to indicate their willingness to filibuster, but not speak until they were finished.²¹⁴ With the silent filibuster preventing an outright change in the rules, changing the precedent took center stage when Senator Harry Reid deployed the nuclear option to remove the filibuster on judicial nominees that were not for the Supreme Court and Senator Mitch McConnell later employed it to include Supreme Court nominations, leaving the legislative filibuster as the only remaining remnant of the practice.²¹⁵

Given this history, we looked at the present situation regarding how restrictive voting laws are being passed throughout the country and noted the similarities between this time and the civil rights era, however, we also conceded that the civil rights era did not have this scale of obstructionism that we are forced to fight against daily. Choosing to look at the two holdouts on filibuster reform, Senators Kyrsten Sinema and Joe Manchin, III, we deconstructed their arguments and showed gaping holes in their logic supported by historical precedent and academic literature. The chapter concludes with speculation about the future of the filibuster and how support from President Joseph R. Biden, Jr. can help.

²¹³ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 124-125; United States Senate, "Senate Cloture Rule," *S. Prt. 112-31*, (Washington, D.C.: United States Government Printing Office 2011)

²¹⁴ Robert C. Byrd, *The Senate: 1789-1989: Addresses on the History of the United States Senate*, Volume 2 (Washington, D.C.: Government Printing Office, 1991) 203; Catherine Fisk and Erwin Chemerinsky, "The Filibuster," *Stanford Law Review* Vol. 49, no. 2 (January 1997): 181-254, accessed February 15, 2021, <https://www.jstor.org/stable/1229297>

²¹⁵ Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy* (New York: Liveright Publishing Corp, 2021), 119; Seung Min Kim, Burgess Everett, and Elana Schor, "Senate GOP goes 'nuclear' on Supreme Court Filibuster," *Politico*, April 6, 2017, Accessed November 4, 2021, <https://www.politico.com/story/2017/04/senate-neil-gorsuch-nuclear-option-236937>.

In summation, we have attempted to demonstrate the breadth of arguments surrounding the filibuster, measure how it affects legislation on a partisan scale, and understand the motivating factors behind the filibuster in the current Congress. While we have peeled back a layer to this issue, a glaring new layer is revealed that requires a stronger way to measure partisanship of legislation to determine if the filibuster has any effect on legislation at all. Such measurements will need to be addressed in the future in a different text.

From the evidence showcased throughout this document, it must be noted that the filibuster does more harm than good. Factoring in the historical design of the Senate with all the attitudes and actions done recently, it only further establishes this theory. The remaining question is how the Senate majority should deal with it. While ideas were briefly discussed in Chapters I and III, it is the opinion of the author that the restoration of the previous question rule is the best path to take, should the majority be able to amend the rules. This would allow for the Senate to continue to employ long-winded debate as a feature of the chamber without necessitating the 60 votes needed to invoke cloture. If the majority is unable to amend the rules, then it will be necessary to drop one last nuclear bomb on the Senate rules and abolish the filibuster completely. While this will expedite things tremendously, it will also be incumbent on the majority party to be respectful of the minority and allow them time to debate measures and attempt to persuade the public.²¹⁶

As of the date of this writing, it appears unlikely that any reform will take place. Majority Leader Chuck Schumer (D-NY) is unlikely to bring these changes to a vote with

²¹⁶ The author is cynical about such an idea but feels that the admonition should be given.

Senators Manchin and Sinema standing as the holdouts in a 50-50 Senate. The political ramifications of a failed vote on filibuster reform will put members on the record but would serve as a potentially catastrophic message by the Republican party in the 2022 midterms and beyond. While it is possible to spin the issue to paint the Republicans as obstructionists, the fact that two members of his own caucus sided with them would propagate a message of Democratic disunity, causing further rifts between the factions within the party. The infighting would then be taken advantage of by the Republicans to create a case that Democrats cannot effectively govern their own party, let alone the nation, and strengthen their case nationally for a return to power in the upper chamber.

The Senate, like any great institution, has a rich history filled with courageous acts, devious plots, and significant examples of mythmaking. Heroes and villains of American history walked its halls and debated with gusto and vigor, attempting to persuade the opposition by any rhetorical means necessary. Unfortunately, that Senate is on its deathbed, if it has not already been irrevocably lost. The continued use of the stealth filibuster has harmed this country and the reputation of the institution as a whole. The harm done is truly immeasurable, but it can be seen throughout American society as people continue to experience hunger, poverty, and illness. It is necessary both for the institution of the Senate and the country to reform the filibuster or abolish it all together. We will not be able to continue on if a minority of the nation is able to control the majority of it, and we will no longer be like a shining city upon a hill, but a fallen empire like that of Rome.

APPENDIX

Senate Rule XXII (S.Doc. 113-18)

[20.2]

STANDING RULES OF THE SENATE

20.2 2. The Presiding Officer may submit any question of order for the decision of the Senate.

21

RULE XXI

SESSION WITH CLOSED DOORS

21.1 1. On a motion made and seconded to close the doors of the Senate, on the discussion of any business which may, in the opinion of a Senator, require secrecy, the Presiding Officer shall direct the galleries to be cleared; and during the discussion of such motion the doors shall remain closed.

21.2 2. When the Senate meets in closed session, any applicable provisions of rules XXIX and XXXI, including the confidentiality of information shall apply to any information and to the conduct of any debate transacted.

22

RULE XXII

PRECEDENCE OF MOTIONS

22.1 1. When a question is pending, no motion shall be received but—

To adjourn.

To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain.

To take a recess.

To proceed to the consideration of executive business.

To lay on the table.

To postpone indefinitely.

To postpone to a day certain.

To commit.

To amend.

Which several motions shall have precedence as they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate.

22.2 2.⁵ Notwithstanding the provisions of rule II or rule IV or any other rule of the Senate, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer, or clerk at the direction of the Presiding Officer, shall at once state the motion to the Senate,

⁵ As amended by S. Res. 28, 99-2, Feb. 27, 1986.

and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the clerk call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yeand-nay vote the question:

“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.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o'clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least one hour prior to the beginning of the cloture vote if an amendment in the second degree. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

After no more than thirty hours of consideration of the measure, motion, or other matter on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then actually pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The thirty hours may be increased by the adoption of a motion,

decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to extend time, specified above, may be made in any one calendar day.

If, for any reason, a measure or matter is reprinted after cloture has been invoked, amendments which were in order prior to the reprinting of the measure or matter will continue to be in order and may be conformed and reprinted at the request of the amendment's sponsor. The conforming changes must be limited to lineation and pagination.

No Senator shall call up more than two amendments until every other Senator shall have had the opportunity to do likewise.

Notwithstanding other provisions of this rule, a Senator may yield all or part of his one hour to the majority or minority floor managers of the measure, motion, or matter or to the Majority or Minority Leader, but each Senator specified shall not have more than two hours so yielded to him and may in turn yield such time to other Senators.

Notwithstanding any other provision of this rule, any Senator who has not used or yielded at least ten minutes, is, if he seeks recognition, guaranteed up to ten minutes, inclusive, to speak only.

After cloture is invoked, the reading of any amendment, including House amendments, shall be dispensed with when the proposed amendment has been identified and has been available in printed form at the desk of the Members for not less than twenty-four hours.

- 22.3 3.⁶ If a cloture motion on a motion to proceed to a measure or matter is presented in accordance with this rule and is signed by 16 Senators, including the Majority Leader, the Minority Leader, 7 additional Senators not affiliated with the majority, and 7 additional Senators not affiliated with the minority, one hour after the Senate meets on the following calendar day, the Presiding Officer, or the clerk at the direction of the Presiding Officer, shall lay the motion before the Senate. If cloture is then invoked on the motion to proceed, the question shall be on the motion to proceed, without further debate.

⁶ As amended by S. Res. 16, 113-1, Jan. 24, 2013.

REFERENCES

- . "Yes, Set It Free." 1915 *New York Times*, January 30,. https://timesmachine.nytimes.com/timesmachine/1915/01/30/100135905.pdf?pdf_redirect=true&ip=0.
- . a. "Definition of PARTISANSHIP." (accessed Aug 20, 2021). <https://www.merriam-webster.com/dictionary/partisanship>.
- Andris, Clio, et al. 2015. "The rise of partisanship and super-cooperators in the U.S. House of Representatives." *PloS One* 10, no. 4: e0123507, <https://www.ncbi.nlm.nih.gov/pubmed/25897956>.
- Arnold, R. Douglas. 1990. *The Logic of Congressional Action*. New Haven, CT: Yale University Press.
- Biden, Joseph R. 2021. "Remarks by President Biden in a CNN Town Hall with Anderson Cooper." October 22, (accessed November 4, 2021). https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/10/22/remarks-by-president-biden-in-a-cnn-town-hall-with-anderson-cooper-2/?utm_source=link.
- Binder, Sarah A. 2003. *Stalemate: Causes and Consequences of Legislative Gridlock*. Washington, D.C.: Brookings Institution Press.
- Binder, Sarah A. and Steven S. Smith. 1997. *Politics or Principle?*. Washington, D.C.: Brookings Institution Press.
- Brennan Center for Justice. "Voting Laws Roundup: October 2021." October 4, 2021. (accessed November 4, 2021). <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>.
- Buckley, F. H. 2021. "Conservatives Should Oppose the Filibuster." *Wall Street Journal*, June 27, (accessed November 4, 2021). <https://www.wsj.com/articles/conservatives-should-oppose-the-filibuster-11624823307>.
- Burdette, Franklin. 1940. *Filibustering in the Senate*. Princeton, NJ: Princeton University Press.
- Byrd, Robert C. 1991. *Addresses on the History of the United States Senate*. The Senate: 1789-1989. Vol. 2. Washington, D.C.: United States Government Printing Office.
- Cain, Bruce, John Ferejohn, and Morris Fiorina. 1987. *The Personal Vote: Constituency Service and Electoral Independence*. Cambridge, MA: Harvard University Press.
- Calhoun, John C. 2017. "States Rights and Nullification.", Accessed Oct 24, 2021. <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,shib&db=f5h&AN=21212961&site=ehost-live&scope=site&authtype=ip,shib&custid=s3555202>.

- Campbell, Angus, Philip Converse, Warren Miller, and Donald Stokes. 1960. *The American Voter*. Chicago, IL: University of Chicago Press.
- Carney, Jordan. 2019. "Senate GOP votes to permanently ban earmarks." May 23, <https://thehill.com/homenews/senate/445338-senate-finance-senate-gop-votes-to-permanently-ban-earmarks>.
- Caughey, Devin and Eric Schickler. 2016. "Substance and Change in Congressional Ideology: NOMINATE and Its Alternatives." *Studies in American Political Development* 30, no. 2: 128-146, <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,shib&db=ahl&AN=118268063&site=ehost-live&scope=site&authtype=ip,shib&custid=s3555202>.
- Chafetz, Josh and Michael J. Gerhardt. 2010. "Is the Filibuster Constitutional?" *Cornell Law Faculty Publications*: 792-793, <http://scholarship.law.cornell.edu/facpub/160>.
- Clark, Jennifer. 2012. "Minority Party Strategies and the Evolution of the Motion to Recommit in the U.S. House." In *Party and Procedure in the United States Congress*, edited by Jacob Straus. Lanham, Maryland: Rowman & Littlefield.
- Converse, Philip E. 2006. "The nature of belief systems in mass publics (1964)." *Critical review (New York, N.Y.)* 18, no. 1-3: 1-74, <http://www.tandfonline.com/doi/abs/10.1080/08913810608443650>.
- Cox, Gary W. and Keith T. Poole. 2002. "On Measuring Partisanship in Roll-Call Voting: The U.S. House of Representatives, 1877-1999." *American journal of political science* 46, no. 3: 477-489, <https://www.jstor.org/stable/3088393>.
- Current, Richard N. 1966. *John C. Calhoun*. New York, NY: Washington Square Press.
- Drukman, Mason. 2004. *Wayne Morse: A Political Biography*. Portland, Oregon: Oregon Historical Society.
- Ellers, Joseph C. 1993. *Strom Thurmond: The Public Man*. Orangeburg, SC: Sandlapper Publishing.
- Directed by Films for the Humanities & Sciences, Infobase, and Public Broadcasting Service. 1985. *Huey Long*. Infobase. <https://fod.infobase.com/PortalPlaylists.aspx?wID=107557&xtid=44138>.
- Directed by Frank Capra. 1939. *Mr. Smith Goes to Washington*. Columbia Studios.
- Fiorina, Morris. 1981. *Retrospective Voting in American National Elections*. New Haven, CT: Yale University Press.
- Fisk, Catherine and Erwin Chemerinsky. 1997. "The Filibuster." *Stanford law review* 49, no. 2: 181-254, <https://www.jstor.org/stable/1229297>.
- Franklin, Charles H. and John E. Jackson. 1983. "The Dynamics of Party Identification." *The American political science review* 77, no. 4: 957-973, <https://dx.doi.org/10.2307/1957569>.

- Gerber, Alan S., Gregory A. Huber, and Ebonya Washington. 2010. "Party Affiliation, Partisanship, and Political Beliefs: A Field Experiment." *The American political science review* 104, no. 4: 720-744, <https://dx.doi.org/10.1017/S0003055410000407>.
- Gerhardt, Michael J. 2004. "The Constitutionality of the Filibuster." *Constitutional commentary* 21, no. 2, <https://search.proquest.com/docview/229450684>.
- Ginsberg, Benjamin and Kathryn Wagner Hill. 2019. *Congress: The First Branch*. New Haven, CT: Yale University Press.
- Gold, Martin B. and Dimple Gupta. "The Constitutional Option to Change the Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster." *Harvard Journal of Law and Public Policy* 28, no. 1: 205-272.
- Greene, Steven. 2002. "The Social-Psychological Measurement of Partisanship." *Political behavior* 24, no. 3: 171-197, <https://www.jstor.org/stable/1558395>.
- Hajnal, Zoltan, Nazita Lajevardi, and Lindsay Nielson. 2016. "Voter Identification Laws and the Suppression of Minority Votes." *Journal of Politics* 79, no. 2.
- Hamill, Ruth and Milton Lodge. 1986. "Cognitive Consequences of Political Sophistication." In *Political Cognition*, edited by Richard R. Lau and David O. Sears. Hillsdale, NJ: Erlbaum.
- Hamilton, Alexander, James Madison, and John Jay. 2015. *The Federalist Papers*. Dublin, OH: Coventry House Publishing.
- Hamm, Brian R. D. 2012. "Modifying the Filibuster: A Means to Foster Bipartisanship While Reining in its Most Egregious Abuses." *Hofstra Law Review* 40, no. 3, <http://scholarlycommons.law.hofstra.edu/hlr/vol40/iss3/6>.
- Harbridge, Laurel. 2015. *Is Bipartisanship Dead? Policy Agreement and Agenda-Setting in the House of Representatives*. New York, NY: Cambridge University Press. <http://dx.doi.org/10.1017/CBO9781139942324>.
- Heitshusen, Valerie. 2013. *Majority Cloture for Nominations: Implications and the "Nuclear" Proceedings*. Washington, D.C.: Congressional Research Service.
- Highton, Benjamin and Cindy D. Kam. 2011. "The Long-Term Dynamics of Partisanship and Issue Orientations." *The Journal of politics* 73, no. 1: 202-215, <https://dx.doi.org/10.1017/S0022381610000964>.
- Jentleson, Adam. 2021. *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy*, First Edition ed. New York: Liveright Publishing Corporation.
- Kenneth A. Shepsle. 2017. *Rule Breaking and Political Imagination*. Chicago, IL: University of Chicago Press.
- Kim, Seung M., Everett, Burgess and Schor, Elana. 2017. "Senate GOP goes "nuclear" on Supreme Court Filibuster." April 6, (accessed November 4,

- 2021). <https://www.politico.com/story/2017/04/senate-neil-gorsuch-nuclear-option-236937>.
- Koger, Gregory. 2012. "Filibustering and Partisanship in the Modern Senate." In *Party and Procedure in the United States Congress*, edited by Jacob Straus. Lanham, Maryland: Rowman & Littlefield.
- . . 2010. *Filibustering: A Political History of Obstruction in the House and Senate*. Chicago, IL: University of Chicago Press.
- Krehbiel, Keith. 2000. "Party Discipline and Measures of Partisanship." *American journal of political science* 44, no. 2: 212-227, <https://www.jstor.org/stable/2669306>.
- Lee, Frances E. and Bruce I. Oppenheimer. 1999. *Sizing Up the Senate: The Unequal Consequences of Equal Representation*. Chicago, IL: University of Chicago Press.
- Lewis, Jeffrey B., et al. 2021. "Voteview: Congressional Roll-Call Votes Database." <https://voteview.com/>.
- Lewis-Beck, Michael S., et al. 2008. *The American Voter Revisited*. Ann Arbor: University of Michigan Press. <http://portal.igpublish.com/iglibrary/search/UMICHB0000126.html>.
- Lupu, Noam. 2015. *Party Polarization and Mass Partisanship: A Comparative Perspective*. Vol. 37.
- Madison, James. 1985. *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*. Athens, OH: Ohio University Press.
- Magliocca, Gerard N. 2011. "Reforming the Filibuster." *Northwestern University Law Review* 105, no. 1: 303-328.
- Manchin, Joe. 2021a. "Joe Manchin: Why I'm voting against the For the People Act." *Charleston Gazette-Mail*, June 6, (accessed Aug 20, 2021). https://www.wvgazettemail.com/opinion/op_ed_commentaries/joe-manchin-why-im-voting-against-the-for-the-people-act/article_c7eb2551-a500-5f77-aa37-2e42d0af870f.html.
- . . 2021b. "Opinion: Joe Manchin: I will not vote to eliminate or weaken the filibuster." *Washington Post*, April 7, (accessed November 4, 2021). https://www.washingtonpost.com/opinions/joe-manchin-filibuster-vote/2021/04/07/cdbd53c6-97da-11eb-a6d0-13d207aadb78_story.html.
- Mayhew, David R. 1976. *Congress: The Electoral Connection*. Yale Studies in Political Science. Vol. 26. New Haven, CT: Yale University Press.
- McCarty, Nolan. 2016. "In Defense of DW-NOMINATE." *Studies in American Political Development* 30, no. 2: 172-184 (accessed 2021/08/20), <https://www.cambridge.org/core/article/in-defense-of-dwnominate/0D5161CCD8C62BEC8DD5ECF8FA8DABEA>.

- Miller, Warren E. and J. Merrill Shanks. 1996. *The New American Voter*. Cambridge, MA: Harvard University Press.
- Monmouth University Poll. 2021. *National: Public Divided on Filibuster Reform, But Few Want to Dump It Entirely*. West Long Branch, New Jersey: Monmouth University.
- Ohlheiser, Abby. 2013. "Watch Ted Cruz Read Every Word of "Green Eggs and Ham" on the Senate Floor." September 24, (accessed November 4, 2021). <https://www.theatlantic.com/politics/archive/2013/09/watch-ted-cruz-read-every-word-green-eggs-and-ham-senate-floor/310674>.
- Oyez. "Shelby County v. Holder." (accessed November 5, 2021). <https://www.oyez.org/cases/2012/12-96>.
- Paul Kane. 2013. "Reid, Democrats trigger "nuclear" option; eliminate most filibusters on nominees." *Washington Post*, November 21, https://www.washingtonpost.com/politics/senate-poised-to-limit-filibusters-in-party-line-vote-that-would-alter-centuries-of-precedent/2013/11/21/d065cfe8-52b6-11e3-9fe0-fd2ca728e67c_story.html.
- Petty, Richard and John Cacioppo. 1981. *Attitudes and Persuasion: Classic and Contemporary Approaches*. Dubuque, IA: William Brown Publishers.
- Plato. "The Apology." <http://classics.mit.edu/Plato/apology/html>.
- Poole, Keith T. and Howard Rosenthal. 2007. *Ideology & Congress*, 2nd ed. New Brunswick, NJ: Transaction Publishers. <https://www.taylorfrancis.com/books/9780203789223>.
- Rahn, Wendy M. 1993. "The Role of Partisan Stereotypes in Information Processing about Political Candidates." *American Journal of Political Science* 37, no. 2: 472-496, <https://www.jstor.org/stable/2111381>.
- Rawls, W. Lee. 2009. *In Praise of Deadlock*. Washington, D.C.: Woodrow Wilson Center Press.
- Real Clear Politics. "Congressional Job Approval." December 17, 2019. (accessed December 17, 2019). https://www.realclearpolitics.com/epolls/other/congressional_job_approval-903.html.
- Reid, Harry. 2019. "Harry Reid: The Filibuster is Suffocating the Will of the American People." *New York Times*, August 12, (accessed November 4, 2021). <https://www.nytimes.com/2019/08/12/opinion/harry-reid-filibuster.html>.
- Reynolds, Molly. 2017. *Exceptions to the Rule*. Washington, D.C.: Brookings Institution Press.

- Rice, Stuart A. 1938. "Quantitative Methods in Politics." *Journal of the American Statistical Association* 33, no. 201: 126-130, <http://www.tandfonline.com/doi/abs/10.1080/01621459.1938.10503380>.
- . . 1925. "The Behavior of Legislative Groups: A Method of Measurement." *Political science quarterly* 40, no. 1: 60-72, <https://www.jstor.org/stable/2142407>.
- Richard A. Arenberg and Robert B. Dove. 2015. *Defending the Filibuster*, 2nd ed. Bloomington, Indiana: Indiana University Press.
- Riddick, Floyd M. and Alan S. Frumin. 1992. *Senate Procedure: Precedents and Practices*. Washington, D.C.: United States Government Printing Office.
- Riley, Thomas W. 1975. *A Little Group of Willful Men*. Port Washington, NY: Kennikat Press.
- Rosenthal, Howard, Keith T. Poole, and Nolan McCarty. 2016. *Polarized America : The Dance of Ideology and Unequal Riches*. The Walras-Pareto lectures, Second edition ed. Cambridge, Massachusetts: The MIT Press. <http://www.vlebooks.com/vleweb/product/openreader?id=none&isbn=9780262334068>.
- Sinema, Kyrsten. 2021. "Opinion | Kyrsten Sinema: We have more to lose than gain by ending the filibuster." *Washington Post*, June 21, (accessed Aug 20, 2021). <https://www.washingtonpost.com/opinions/2021/06/21/kyrsten-sinema-filibuster-for-the-people-act/>.
- Smith, A. Robert. 1962. *The Tiger in the Senate: The Biography of Wayne Morse*. Garden City, New York: Doubleday & Company, Inc.
- Sprunt, Barbara. "Amy Coney Barrett Confirmed to Supreme Court, Takes Constitutional Oath." *NPR*. Published October 26, 2020. Accessed December 5, 2021. <https://www.npr.org/2020/10/26/927640619/senate-confirms-amy-coney-barrett-to-the-supreme-court>.
- Stokes, Zachary. 2011. "Tyranny of the Minority: Evolution of the Filibuster and Ways to Reform its Usage.", Johns Hopkins University.
- Strand, Mark and Timothy Lang. 2017. *The Filibuster in the U.S. Senate: Options for Reform*. Washington, D.C.: Congressional Institute.
- Straus, Jacob. 2012. "Let's Vote: The Rise and Impact of Roll Call Votes in the Age of Electronic Voting." In *Party and Procedure in the United States Congress*, edited by Jacob Straus. Lanham, Maryland: Rowman & Littlefield.
- Thomas Jipping. 2018. "5 Years After Going Nuclear, Democrats Have Reaped What They Sowed." November 26, (accessed March 25, 2021). <https://www.heritage.org/political-process/commentary/5-years-after-going-nuclear-democrats-have-reaped-what-they-sowed>.

- U.S. Bureau of Labor Statistics. a. "CPI Inflation Calculator." (accessed November 4, 2021). https://www.bls.gov/data/inflation_calculator.htm.
- U.S. Congress. *Congressional Record*. 83rd Cong., 1st sess., 1953. Vol. 99, pt. 3.
- . *Congressional Record*. 117th Cong., 1st sess., 2021. Vol. 167.
- U.S. Congress. Senate. Committee on Rules and Administration. *Standing Rules of the Senate*. 113th Cong., 1st sess., 2013. S.Doc. 113-18.
- . b. Committee on Rules and Administration. *Senate Cloture Rule*. Report prepared by the Congressional Research Service. 112th Cong., 1st sess., 2011. S. Prt. 112-31.
- . c. *Freedom to Vote Act*. S 2747. 117th Cong., 1st sess. Placed on Senate Calendar September 15, 2021. <https://www.congress.gov/117/bills/s2747/BILLS-117s2747pcs.pdf>.
- . d. *John R. Lewis Voting Rights Advancement Act of 2021*. S 4. 117th Cong., 1st sess. Placed on Senate Calendar October 6, 2021. <https://congress.gov/117/bills/s4/BILLS-117s4pcs.pdf>.
- . e. *Senators of the United States 1789 - Present*. Washington, D.C.: United States Government Printing Office.
- U.S. Congress. House. *For the People Act of 2021*. HR 1. 117th Cong., 1st sess. Passed House March 3, 2021. <https://congress.gov/117/bills/hr1/BILLS-117hr1eh.pdf>.
- U.S. Senate. a. "Cloture Motions." (accessed May 15, 2021). <https://www.senate.gov/legislative/cloture/clotureCounts.htm>.
- . . b. "Strom Thurmond: A Featured Biography." (accessed November 3, 2021). https://www.senate.gov/senators/FeaturedBios/Featured_Bio_Thurmond.htm.
- . . c. "Votes." (accessed August 20, 2021). https://www.senate.gov/legislative/votes_new.htm.
- Wawro, Gregory J. and Eric Schickler. 2006. *Filibuster: Obstruction and Lawmaking in the U.S. Senate*. Princeton, NJ: Princeton University Press.
- Williams, T. Harry. 1969. *Huey Long*. New York, NY: Alfred A. Knopf, Inc.
- Winter, Damon. 2021. "For Democracy to Stay, the Filibuster Must Go." *New York Times*, March 11, (accessed November 4, 2021). <https://www.nytimes.com/2021/03/11/opinion/us-filibuster-senate.html>.