

Why The U.S. Senate Is

How Did We Get Here?

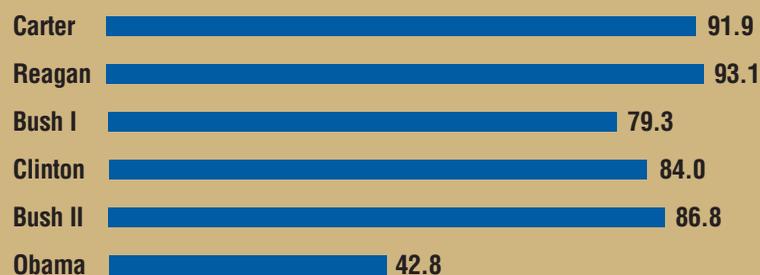
The Senate has been called “the world’s greatest deliberative body.” Today, it barely functions. That’s a sharp contrast from what the Founding Fathers intended. When they drafted the Constitution, Alexander Hamilton and James Madison were determined to avoid the paralysis of the “supermajority” requirements contained in the Articles of Confederation. ■ “[Requiring more than a majority would mean] the fundamental principle of free government would be reversed.” — *James Madison, Federalist Papers Number 58*

■ “[Requiring more than a majority is] a poison [that] destroy[s] the energy of the government... [If] the sense of the smaller number will overrule that of the greater... [the result will be] continual negotiation and intrigue; contemptible compromise of the public good.” — *Alexander Hamilton, Federalist Papers Number 22*

Today, the filibuster has delayed or blocked the confirmation of scores of presidential nominees to top government posts, cabinet positions, and to the courts. Just 43 percent of President Obama’s nominees have been approved. During the Bush administration, the Senate confirmed 87 percent of nominees

FIGURE 1

Percent of all nominees confirmed*



* In the first 18 months

Source: Carter through Clinton comes from data compiled by the Congressional Research Service. Bush II and Obama comes from data compiled by the author using Department of Justice and Senate Judiciary Committee information.

over the same period. In the Clinton years it was 84 percent, and under President Reagan, 93 percent.

There are still 196 Presidential nominees awaiting confirmation. If every nominee were blocked and filibustered, which virtually has happened, it would take the Senate a full eight months working 24-hour days of doing nothing but confirmations to fill these vacancies.

The warnings by those who framed our Constitution have been totally ignored. Instead, we have a

Senate system where obstruction is the rule, not the exception. Recent polls have found that all Americans, no matter what their political affiliation, agree that “Senators should allow a bill to be voted on.” But what we’ve seen over the past few years is that fewer and fewer bills, and fewer and fewer nominations, ever make it through the Senate.

Can We Reform the Senate in Time to Save Democracy?



Top Ten Ways to Bring the Senate

By Ian Millhiser, policy analyst at American Oversight

Why Reforming the Senate Rules Matters

For workers, the minority’s ability (40 votes) to endlessly block key nominations made by the Obama administration has a real cost.

Even without this abuse of the rules by the minority, workers fighting for economic justice must wait much too long under the National Labor Relations Board process to get their jobs back after being wrongly fired or to finally get a union voice.

Tactics by Senate Republicans this year made a bad situation much worse.

Senate Republicans blocked the nominations of Craig Becker and Mark Pearce because of their support for workers and bargaining rights. The labor board had been operating with just two members for more than a year, creating a huge backlog of important cases and delaying justice for thousands of workers.

CWA took the lead in pressing the Obama administration to name Pearce and Becker as recess appointments, after it was clear that the Senate minority would continue to block their nominations. CWA activists convinced 141 members of Congress to sign a petition calling for the 18-month or shorter recess appointments, instead of the full five-year term, and the White House agreed.

That’s the only way workers can even begin to see economic justice.

Obstruction tactic No. 1— Endless Debate

The word “debate” does not mean much in the United States Senate. Rather than being a free exchange of ideas intended to convince other senators of one position or another, most Senate debate time is occupied by senators giving closely vetted speeches to an almost-entirely empty chamber. Nevertheless, the Senate rules make it very difficult to stop the serial speeches and actually hold a vote. Unless at least 60 senators agree to hold a vote, the speeches go on forever.

Obstruction tactic No. 2— Endless Debate Over Whether to Debate

Not only can senators use the filibuster to force endless debate, they

can also use it to prevent debate from starting in the first place. Before the Senate can begin debate on most legislation, the senators must either unanimously agree to consider it or the majority leader must offer a “motion to proceed” to consideration of that bill. This motion can be filibustered. Dissenting senators have at least two opportunities to filibuster, once to prevent debate from starting and another time to prevent it from ending.

Obstruction tactic No. 3— Endless Debate over Whether to Negotiate

If the House and Senate pass similar but not identical bills, the differences between the two bills generally are hashed out through a process known as a “conference committee,”

of relevant members of the Senate and House of Representatives. Before these negotiations can begin, however, the Senate must pass three motions: a motion formally disagreeing with the House bill; a motion expressing the Senate’s desire to conference; and a motion enabling a small group of senators to be designated as negotiators. Each of these three motions can be filibustered.

Obstruction tactic No. 4— Forced Debate on Matters that Have Already Been Decided

Even when a filibuster is broken, the delay doesn’t end. Once 60 senators break a filibuster—a process known as “cloture”—the dissenters can still force up to 30 hours of post-cloture debate per broken filibuster. To pass a single bill, the Senate may need to

n't Working

Just how bad are things today in the Senate? If the climate of obstructionism in the Senate that exists today represented how that body has always operated, landmark legislation that brought social and economic justice to millions of Americans would never have been enacted.

Organizing and bargaining rights through the **National Labor**

the **Civil Rights Act** and **Voting Rights Act**.

These were very controversial measures when introduced in Congress, much more so than any of the issues that have been delayed, blocked or killed by Republican-led abuse of the Senate rules, including filibusters, in the past few years.

Just one of these landmark measures — the Civil Rights Act of 1964 — was subject to a filibuster. The biggest obstacle to civil rights was a block of 18 mostly Southern senators who led a 57-day filibuster against the bill.

Democrats were in the majority in 1964, and the legislation had the strong support of President Lyndon Johnson. But breaking the filibuster required the political courage of Republican Senate Minority Leader Everett Dirksen, who convinced enough Republican colleagues to support the bill and pass this historic legislation.

This kind of cooperation is nonexistent in today's Senate.

Republican Senate leaders routinely abuse the filibuster and other Senate rules simply to obstruct the nation's business, and not because they oppose a particular bill.

Republicans even block meas-

Relations Act. Secure retirement and health care for older Americans that resulted from the **Social Security and Medicare** programs. An end to years of discrimination endured by people of color through

Filibuster by the Numbers

This chart shows how the abuse of the filibuster and Senate rules has grown over the years. Now, it's taken for granted that any Senate action requires a supermajority, or 60 votes. The issue of filibuster abuse affects all Americans. The number of motions filed to delay debate and actions on issues and appointments has skyrocketed.

1919-1960	—	Delaying motions filed 27 times
108th Congress: 2003-04	Democratic minority	Delaying motions filed 62 times
110th Congress: 2007-08	Republican minority	Delaying motions filed 139 times
111th Congress: 2009-present	Republican minority	Delaying motions filed 120 times*

*The 111th Congress is still in session, so final number can be higher.
Source: United States Senate

ures that they themselves have urged President Obama to support. Case in point: earlier this year, the Obama administration announced the creation of a Presidential Debt Commission that would make recommendations to reduce the federal debt. Republicans suggested that instead of an advisory group, the debt commission be established by Congress so that it would have real authority.

The White House and Senate

Democrats agreed, and introduced legislation to do just that. Senate Republicans led a filibuster that killed the measure.

Republicans also have used holds and filibusters to block legislation they later voted to approve overwhelmingly. The Credit Card Holders Bill of Rights eventually passed the Senate by a 92-2, but Senate Republicans delayed the bill for months.

Because of his five-day filibuster,

one senator, Republican Jim Bunning (Kentucky) held up unemployment compensation for thousands of jobless Americans, delayed Medicare payments to doctors and caused thousands of federal transportation workers to be furloughed. That bill eventually passed by a 98-0 vote.

This kind of obstructionism in the Senate is pure politics, by a Republican leadership that is doing the bidding of special corporate interests.

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waste 30 hours after breaking the filibuster on the motion to proceed, another 30 hours after breaking the filibuster on the motion to end debate, and another 90 hours after breaking the three filibusters before the bill goes to conference committee. This adds up to nearly an entire week every time the Senate passes a single bill.

Obstruction tactic No. 5— Secret Holds

Because unanimous consent is required to avoid a filibuster and post-cloture debate, just one senator can place a “hold” on any senate business by indicating their willingness to withhold such consent. Worse, Senate customs have evolved to allow “secret holds,” where a senator tells his party leader to place the hold and the

leader blocks progress on a matter without ever revealing which senator is responsible for this obstruction.

Senators have also begun to use these holds simply to prevent business from moving quickly on the Senate floor.

Obstruction tactic No. 6— Forcing a Roll Call Vote on Everything

The Senate frequently uses relatively quick voice votes to conduct routine procedural business and move uncontroversial bills and nominations. The Constitution, however, permits just one fifth of the senators present for a vote to demand a much more time consuming roll call vote. By drawing out the time required for each vote, a small minority of the senators can gradu-

ally run down the Senate's clock.

Obstruction tactic No. 7— Frivolous Points of Order

The tactic of forcing time-consuming roll call votes works best when used with another tactic to maximize the number of votes taken. One easy way a senator can force a large number of votes is by constantly raising “points of order” alleging that the majority's actions violate the Senate rules.

Obstruction tactic No. 8— Frivolous Amendments

In most cases, any senator can offer any amendment to any bill under consideration, regardless of whether or not that amendment is germane to the underlying legislation. Accordingly, senators can try to

delay or block legislation by overwhelming the amendments process or by filing “poison pill” amendments, which are likely to pass but which also are likely to cause senators who would otherwise vote for the underlying bill to turn against it.

Obstruction tactic No. 9— Reading Amendments Aloud

Unless every single senator agrees to dispense with this requirement, each amendment must be read aloud after a senator offers it. In some cases, these amendments can be hundreds of pages long and require many hours to finish reading.

Obstruction tactic No. 10— Committee Shenanigans

In addition to the minority's immense power to delay progress

on the Senate floor, each committee has its own set of rules which can be abused to prevent business from moving forward. Many committees, for example, require that a certain number of senators be present before a bill or nomination can be reported out of the committee. The Judiciary Committee's rules even provide that “Eight Members of the Committee, including at least two Members of the minority, shall constitute a quorum for the purpose of transacting business.” Thus, it is possible for the minority to stall all business in that committee simply by refusing to show up for work.

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Why the U.S. Senate Isn't Working

The Senate operates under a complicated number of rules, including the rule that requires a “supermajority,” or 60 votes, before the Senate can even discuss legislation or move forward on any Senate business. These rules aren't included in the Constitution and all have been changed over our country's history.

'A Graveyard of Good Ideas'

msnbc

Aug. 19, 2010

MY GOAL FOR THE SENATE IS COMPLETE GRIDLOCK: SEN. JIM DEMINT (R-SC)

Bloomberg Businessweek

Bloomberg Businessweek Sept. 16, 2010

A Grim Version of 2012 and more Gridlock

The Washington Post

Aug. 25, 2010

Using Senate Rules to Block Debate and Votes

Check out this list to see just how the Senate rules block a majority of senators from taking up important measures and getting the people's business done.

Unanimous consent. All 100 senators must agree that the business of the Senate will go forward. One senator can stop bills, nominations, appointments, even ordinary actions like naming a post office.

Preventing discussion of a bill. There are four ways a single senator can hold up discussion of a bill.

1. On the motion to consider.
2. On the actual motion or issue.
3. On the nomination of a conference committee
4. On the House-Senate conference report which must be approved by the full Senate.

To make matters worse, when a single senator sets out to hold up business, he or she can insist that the Senate conduct no other business for 30 hours, until another vote to move forward is held.

Holds on nominees. A single senator can place a “secret” anonymous hold on a nominee or legislation.

Other holds. The Democratic or Republican cloak rooms also can put a hold on a nominee.

Requiring a supermajority on nearly everything. A supermajority of all senators, or 60 votes, is needed just to allow discussion or a vote on a bill. In a democracy, a majority is the standard for elections and referenda, not a supermajority.

Committee delays. All 100 senators must consent to holding a committee meeting on any day after

the Senate has been in session for two hours, or after 2:00 p.m. when the Senate is in session. This enables just one senator to stop important committee business from happening, forcing work to a grinding halt.

How does anything ever get done? Lately, it doesn't.

Senate Rules and Filibuster Aren't in the Constitution

Senate rules, and especially the rules about filibuster and debate, have changed a lot over our nation's history.

1789 The original rules of the Senate included a provision that would allow debate to be cut off by a simple majority vote. And from 1789-1806, this provision was only used four times in the U.S. Senate.

1917 A procedure to cut off debate, known as “cloture,” was adopted. This rule required two-thirds (up to 67 votes) of the Senators present and voting to agree.

1949 This rule was changed to require that two-thirds (a full 67 votes) of the full Senate had to vote to cut off debate. This was the start of record-setting filibusters, including Strom Thurmond's marathon filibuster of the 1957 Civil Rights Act.

1959 The filibuster rule was changed back to require that two-thirds (up to 67 votes) of those senators voting and present was necessary to cut off debate.

1975 to present In 1975, the number of votes needed to cut off debate was changed to three-fifths of all senators, or 60 votes. This is the standard in place today.

How the Abuse of Senate Rules Harms All of Us

The current Senate rules haven't been changed for decades. They just don't work in today's super-charged political climate. In past years, our nation was able to move forward on landmark legislation that put in place workers' rights, civil rights, retirement security for seniors and so much more. Today, we only see outrageous obstruction, like this:

Senators Taking Hostages. Senator Richard Shelby (R-AL) recently placed a blanket hold on over 70 nominees from the Obama administration in an attempt to force the federal government to award a \$35 billion defense contract to Northrop Grumman in Alabama.

One Senator Controlling the Entire Senate. Senator Jim DeMint (R-SC) refused to allow any legislation to move forward that his office had personally not cleared. Instead of voting against the legislation, Senator DeMint blocked any of his colleagues from being able to vote on legislation that did not receive his okay — effectively controlling the agenda for the entire Senate.

Stalling Bipartisan Legislation. One senator stood in the way of a vote on a bipartisan food safety bill despite the recent salmonella outbreaks that have sickened thousands. Even though Senator Tom Coburn's (R-OK) Republican colleagues Senators Judd Gregg (R-NH), Mike Enzi (R-WY), and Richard Burr (R-NC) were co-sponsors of this important legislation, Coburn still objected to it receiving a vote. The House passed similar legislation in July of 2009.

Government Agencies Prevented From Doing Their Jobs. For months, the National Labor Relations Board had just two members, because of holds and threatened filibusters on nominees to fill the remaining three seats. This further delayed and denied justice for thousands of workers who were illegally fired or mistreated by employers.

In this session of Congress, the House of Representatives has passed more than 400 bills. None of these has been debated in the Senate. It's time to change these broken Senate rules, which have put special interests above the public interest.