

Primary Primers: Why the Senate Filibuster is so important in this presidential election



US Senators can use the filibuster to delay and block legislation. [Lauren C. Bell](#) writes that should Joe Biden win the White House and then wish to increase the size of the Supreme Court through legislation, then the already diminished Senate filibuster would need to be eliminated completely – something that the former Vice President appears reluctant to do.

• This article is part of our [Primary Primers](#) series curated by Rob Ledger (Frankfurt Goethe University) and Peter Finn (Kingston University). Ahead of the 2020 election, this series explores key themes, ideas, concepts, procedures and events that shape, affect and define the US presidential primary process. If you are interested in contributing to the series contact Rob Ledger (ledger@em.uni-frankfurt.de) or Peter Finn (p.finn@kingston.ac.uk).

Given the arcane nature of the US Senate's legislative process, it's unusual that a presidential election campaign would focus any amount of attention on the chamber's rules. But after determined minorities in the Senate prevented the Obama Administration from reaching its legislative and appointment goals, many Democrats see eliminating the filibuster – when senators hold or threaten to hold the Senate floor in order to delay or to block a vote – as the only way that a potential Joe Biden administration will be able to get anything done.

A Brief History of the Senate Filibuster

There is nothing in the rules of the Senate that allow for filibustering. Rather, it is a negative right possessed by all senators owing to the chamber's lack of a previous question rule, and to [Rule XIX](#) of the Senate's *Standing Rules*, which provides in relevant part that "No Senator shall interrupt another Senator in debate without his consent..."

The filibuster has long been a defining characteristic of the Senate; the practice dates back at least to 1826, when Virginia Senator John Randolph prevented the Senate from acting on several of President John Quincy Adams' judicial nominees. [But for much of the Senate's history, filibusters were rare.](#) From 1790 to 1900, less than two dozen filibusters in *total* took place. From 1900 to 1925, there were 45 filibusters, twenty of which occurred after 1917, the year that the Senate first implemented Rule XXII, which allows a supermajority of senators to limit the time for debate by invoking what is known as cloture and effectively ending a filibuster.

The Senate adjusted the cloture rule a handful of times between 1917 and 1975 in response to obstructionist behavior by members of the chamber, [ultimately reducing its original 2/3 supermajority to three-fifths in 1975.](#) And the cloture procedure was not the only option that the Senate developed to keep unruly senators in check; in the 92nd Congress (1971-2), then-Majority Whip Robert Byrd developed a system known as "double-tracking" that allowed a contested bill to be set aside while other, noncontroversial legislation proceeds.

While the reduced cloture threshold and tracking processes were intended to allow the majority to restrict obstruction, in fact, the opposite occurred. The number of filibusters increased dramatically starting in the early 1970s, with more than twice as many filibusters taking place between 1970 and 2010 than took place *total* in the 180 years prior. Indeed, every time the Senate has tried blunt the impact of filibustering, [delays have become more frequent.](#) This is because the more ways there are to work around a filibuster, the less costly they become to wage —senators who lead them can do so largely free of worry about retribution or injury to friendships or to their reputations.

The Filibuster and the 2020 Presidential Election

One such effort to reduce the effect of filibustering was the successful November 2013 effort by Senate Democrats to [eliminate the filibuster on presidential nominations](#) other than to the Supreme Court. While this paved the way for many of President Barack Obama's stalled judicial nominees to be confirmed even in the face of sustained Republican opposition, it also meant that when Republicans found themselves with a majority in the Senate, a Republican president, and a presidential nominee to the Supreme Court in 2017, they could simply extend the Democrats' precedent to include nominations to the Supreme Court. Indeed, that is exactly what they did in March 2017 to confirm [Neil Gorsuch](#).

As a result, since 2017, there is quite literally [nothing a minority party in the Senate can do to block a president's nominations](#), including to the Supreme Court. Many Democrats seethe that the seat now held by Justice Neil Gorsuch was [stolen](#) and object to the [expedited confirmation process for Judge Amy Coney Barrett](#), who was nominated in September 2020 to replace the late liberal icon, Justice Ruth Bader Ginsburg. For this group of partisans, the only possible response, should Biden be elected, is to increase the size of the Supreme Court in order to add the Democratic president's appointees – known more widely as 'court packing'. There's nothing in the Constitution that would prevent this; the number of justices is a [matter for Congress to decide](#) through legislation.



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But the only path forward toward increasing the size of the Court [requires the elimination of the Senate filibuster](#), which still exists for legislation. Besides court expansion, many Democrats see the elimination of the filibuster as the most expeditious way to accomplish important legislative priorities in the areas of gun control, health care, climate change, and immigration—among others. Measures addressing many of these issues have been approved by the Democratic majority in the House during 2019 and 2020, but the Senate under Republican control has not moved forward on them. Majority Leader Mitch McConnell has proudly proclaimed himself the “[Grim Reaper](#)” for progressive legislation.

But Biden, whose political career was steeped in the [old folkways](#) of the Senate, so far hasn't been willing to commit to eliminating the filibuster. He has been cagey about his views, initially suggesting that he [opposed the elimination](#) of the filibuster, then [hinting that he was warming up to it](#), and lately signaling a [reluctance to endorse abolishing the practice](#). And while the progressive wing of the Democratic party is [agitating for an end to the procedure](#), even if Biden were to embrace eliminating the filibuster, it is [not a foregone conclusion that a majority of Senate Democrats would agree](#)—although an influx of new Democratic senators, should it materialize, might force the veterans' hands. It is also [far from clear](#) that most Democrats would support such a step, with relatively small numbers of rank-and-file partisans embracing the abolition of the tactic.

The wholesale elimination of the Senate filibuster seems unlikely; reforms are much more probable. So far, Biden's evasiveness on the issue of abolishing the filibuster has served him well; should he win election, he is certain to find himself embroiled in a debate over the future direction of his former institution, and he has left all his options open. But what he must know from his decades of service in the Senate, and what the Gorsuch and Barrett confirmations reveal, is that if Democrats abolish the filibuster, they will realize short term legislative gains but will leave themselves vulnerable if their majority does not last.

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Note: This article gives the views of the author, and not the position of USAPP – American Politics and Policy, nor the London School of Economics.

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