



CARDOZO

Benjamin N. Cardozo School of Law

LARC @ Cardozo Law

ERSJ Blog

Journal Blogs

2-3-2022

Stonewalling Democracy: Demanding the Elimination of the Senate Filibuster in the Pursuit of Progress

Davis Villano

Cardozo Journal of Equal Rights and Social Justice

Follow this and additional works at: <https://larc.cardozo.yu.edu/ersj-blog>



Part of the [Law Commons](#)

Recommended Citation

Villano, Davis, "Stonewalling Democracy: Demanding the Elimination of the Senate Filibuster in the Pursuit of Progress" (2022). *ERSJ Blog*. 17.

<https://larc.cardozo.yu.edu/ersj-blog/17>

This Article is brought to you for free and open access by the Journal Blogs at LARC @ Cardozo Law. It has been accepted for inclusion in ERSJ Blog by an authorized administrator of LARC @ Cardozo Law. For more information, please contact larc@yu.edu.

Davis Villano  Feb 3 8 min read

Stonewalling Democracy: Demanding the Elimination of the Senate Filibuster in the Pursuit of Progress

At the close of his first year in office, President Biden and his administration have claimed to have “delivered results for the American people”[1] and have further “made history growing our economy, addressing the climate crisis, and building a judiciary and government that represents America.”[2] While the President’s record certainly indicates a major shift in political priorities from the previous administration, critics continue to demand that President Biden take more assertive action to execute the purported legislative goals of his administration, [3] particularly the Build Back Better Act[4] and the John Lewis Voting Rights Act.[5] Amid widespread misinformation stoking fears of voter fraud and Republican-led state legislatures passing restrictive voting rights laws, President Biden’s inaugural address pledge to “defend our democracy”[6] in the wake of a violent insurrection on the U.S. Capitol feels particularly empty to many one year into his presidency.[7] Facing hyper-partisan opposition to his legislative agenda—as well as prominent Senate defectors within the Democratic Caucus—President Biden and Congressional Democrats are confronted with a specific hurdle which time-and-again has blocked any significant progress: the Senate filibuster.[8]

Following months of calls to end the filibuster by progressive activists and legislators alike, President Biden called for the Senate filibuster rule(s) to be changed.[9] During speech made on January 11th, 2022, the President warned of “a grave threat to American democracy if lawmakers did not act to ‘protect the heart and soul’ of the country,”[10] further stating “we have no option but to change the Senate rules, including getting rid of the filibuster for this.”[11] And yet despite this call for reform, the U.S. Senate voted 48-52 against altering the filibuster on January 19th, 2022, specifically to change the chamber rules for voting rights legislation *alone*; with Democrats—Sen. Krysten Sinema (D-AZ) and Sen. Joe Manchin (D-WV)—voting to oppose the change and potentially “dooming much of Democrats’ agenda for the near term.”[12] In what many political commentators consider a “embarrassing setback”[13] for President Biden, conceding that after a “closed-door meeting [with Senators Sinema and Manchin] that his efforts likely were not enough.”[14]

Fundamentally what is at stake both for President Biden and Congressional Democrats is not only the future of voting rights in America, but other substantive legislative goals on which the President ran his 2020 presidential campaign; without an end to the Senate filibuster, the “reality the party faces... [is] one that severely reduces the

policy impact it could otherwise have.”[15] For the moment, Democrats control the White House and both chambers of Congress, and yet despite this both continue to endure unfavorable polling—perceived by many to have achieved little progress on either the President’s campaign promises or his party’s legislative agenda—with political commentators speculating Democratic losses in the 2022 midterm elections and ceding control of Congress to Republicans.[16] Further, while the filibuster’s defenders argue the Senate rule “enriches our democracy by forcing senators to debate more,” a new study published by the University of Chicago found that in reality that “historical data shows that the filibuster largely has no effect on debate—and to the extent that it does, it appears to *dampen* it rather than invigorate it.”[17] In a 2021 op-ed critical, Rep. David N. Cicilline (D-R.I.) writes that “[i]nstead of passing legislation into law with the support of the majority in both chambers, the will of the American people is being blatantly and undemocratically subverted by the filibuster,”[18] arguing that Democrats must “eliminate the filibuster completely, or at the very least, make sure that it cannot be used as a weapon to defeat legislation that promotes, protects, and defends civil rights, voting rights, and our democracy”[19] arguing that “[a] procedural tactic should not be used to deny BIPOC individuals their right to vote or allow an LGBTQ+ American to be discriminated against just because one person wants to stand in the way of progress.”[20] If President Biden and Democrats seriously hope to deliver on their promises to the American public, and in turn “‘protect the heart and soul’ of the country,”[21] the solution is clear: eliminate the filibuster, lest the Senate devolve further into “a graveyard for democracy.”[22]

[1] *Fast Facts: Record Firsts in President Biden’s First Year*, The White House (Jan. 19, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/19/fast-facts-record-firsts-in-president-bidens-first-year/>.

[2] *Id.*

[3] *Top progressive urges Biden to focus on Build Back Better despite Manchin blow*, The Guardian (Dec. 26, 2021), <https://www.theguardian.com/us-news/2021/dec/26/joe-biden-build-back-better-pramila-jayapal-manchin-rejection> (“Pramila Jayapal, a leading House progressive, has urged Joe Biden to continue focusing on his Build Back Better social spending legislation and to use executive actions as a way to work around public rejection by Senator Joe Manchin”).

[4] H.R. 5376 (the “Build Back Better Act”); see *The Build Back Better Framework: President Biden’s Plan to Rebuild the Middle Class*, The White House (last accessed Jan 20, 2022), <https://www.whitehouse.gov/build-back-better/> (stating that this legislation “will set the United States on course to meet its climate goals, create millions of good-paying jobs, enable more Americans to join and remain in the labor force, and grow our economy from the bottom up and the middle out”).

[5] H.R. 4 (the “John R. Lewis Voting Rights Advancement Act of 2021”); see

[6] *Inaugural Address by President Joseph R. Biden, Jr.*, The White House (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/20/inaugural-address-by-president-joseph-r-biden-jr/>.

[7] Jonathan Lemire, *Biden’s first year: A tale of 2 presidencies*, Politico (Jan. 19, 2022), <https://www.politico.com/news/2022/01/19/joe-biden-first-year-two-presidencies-527352> (noting that “on the

big ticket items, including voting rights, there has not been success. It has left Biden appearing, at times, as president of the Senate rather than the nation as a whole, as his administration became bogged down in the legislative morass”).

[8] *See Rules of the Senate, Rule XIX (Debate) and XXII (Motions)*, U.S. Senate (last accessed Jan 22, 2022), <https://www.rules.senate.gov/rules-of-the-senate>; *see also About Filibusters and Cloture*, U.S. Senate (last accessed Jan. 22, 2022), <https://www.senate.gov/about/powers-procedures/filibusters-cloture.htm> (explaining the Senate’s adoption of a rule to “allow a two-thirds majority to end a filibuster, a procedure known as ‘cloture’” requiring “two-thirds of senators voting to three-fifths of all senators duly chosen and sworn, or 60 of the 100-member Senate”).

[9] Morning Edition, *Biden calls for changes to Senate filibuster to pass voting rights bills*, NPR (Jan. 12, 2022), <https://www.npr.org/2022/01/12/1072372531/biden-calls-for-changes-to-senate-filibuster-to-pass-voting-rights-bills> (quoting Nse Ufot—CEO of the Georgia voting rights group the New Georgia Project—as stating “[w]e need a path forward that gets us to the legislation that is required in order to stop these attacks on our elections infrastructure. I don't think that there is anything more important to how we self-govern... There's nothing more important than our ability to participate in our elections to make sure that the will of the people is reflected in the results of our elections”).

[10] Katie Rogers, *'We have no option': Biden calls for changing Senate rules to pass voting rights laws*, N.Y. Times (Jan. 11, 2022), <https://www.nytimes.com/2022/01/11/us/politics/biden-filibuster-voting-rights.html>; *Remarks by President Biden on Protecting the Right to Vote*, The White House (Jan. 11, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/01/11/remarks-by-president-biden-on-protecting-the-right-to-vote/> (quoting President Biden, stating “I ask every elected official in America: How do you want to be remembered?... Do you want to be on the side of Dr. King or George Wallace? Do you want to be on the side of John Lewis or Bull Connor? Do you want to be on the side of Abraham Lincoln or Jefferson Davis?”).

[11] *Remarks by President Biden on Protecting the Right to Vote*, The White House (Jan. 11, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/01/11/remarks-by-president-biden-on-protecting-the-right-to-vote/>; *see also* Maegan Vazquez, *Biden calls on Senate to change filibuster rules to pass voting rights bills in forceful speech: 'I'm tired of being quiet'*, CNN (Jan. 12, 2022), <https://www.cnn.com/2022/01/11/politics/biden-atlanta-voting-rights-speech/index.html> (“Without changing the rules, it's unclear how either bill Biden wants passed—the Freedom to Vote Act and the John Lewis Voting Rights Advancement Act—will get done”).

[12] Li Zhou, *Democrats' failure on filibuster reform will haunt them*, Vox (Jan. 19, 2022), <https://www.vox.com/2022/1/19/22881837/senate-filibuster-vote-voting-rights-joe-manchin-krysten-sinema>; Kelsey Snell, *Biden says he doesn't know if voting rights legislation can pass*, NPR (Jan. 13, 2022), <https://www.npr.org/2022/01/13/1072778094/sen-sinema-dashes-democrats-hope-to-change-the-filibuster> (“Sinema said she supports voting reforms and the specific voting rights bills under consideration but added she is unwilling to change her position on the filibuster for them to pass”).

[13] Carl Hulse, *Sinema Rejects Changing Filibuster, Dealing Biden a Setback*, N.Y. Times (Jan. 13, 2022), <https://www.nytimes.com/2022/01/13/us/politics/sinema-voting-rights-bill.html> (“Senator Krysten Sinema... stunned her colleagues just hours before the president was slated to make his case to them in person at the Capitol by taking the Senate floor to declare that she would not support undermining the filibuster to pass legislation under any circumstances”).

[14] Kelsey Snell, *Biden says he doesn't know if voting rights legislation can pass*, NPR (Jan. 13, 2022), <https://www.npr.org/2022/01/13/1072778094/sen-sinema-dashes-democrats-hope-to-change-the-filibuster> (quoting President Biden as saying “[b]ut I know one thing: As long as I have a breath in me, as long as I'm in the

White House, as long as I'm engaged at all, I'm going to be fighting to change the way these legislatures have moved”).

[15] See Li Zhou, *Democrats' failure on filibuster reform will haunt them*, Vox (Jan. 19, 2022), <https://www.vox.com/2022/1/19/22881837/senate-filibuster-vote-voting-rights-joe-manchin-kyrsten-sinema> (noting that “[b]ecause the filibuster is still intact, a lot of Democratic bills have no path forward” and further that “[b]y voting to keep the filibuster as is, moderate Democrats have guaranteed that much of the party’s agenda will be stymied for now. Already, Republicans have blocked multiple bills including legislation to establish a committee to investigate the January 6 insurrection and a measure aimed at guaranteeing equal pay in the workplace”); see, e.g., Rep. David N. Cicilline, *To ensure equality for all, Senate must end filibuster*, The Hill (Oct. 25, 2021), <https://thehill.com/blogs/congress-blog/politics/578240-to-ensure-equality-for-all-senate-must-end-filibuster> (writing that “[t]he filibuster... has prevented this Congress from making progress on nearly every major issue. More than 70 years after the Jim Crow era ended, it is still being used to block civil rights legislation like the John Lewis Voting Rights Advancement Act, the For the People Act, the George Floyd Justice in Policing Act, the DREAM Act, and the Equality Act—even though each of these bills have overwhelming public support”).

[16] Jeffrey M. Jones, *U.S. Political Party Preferences Shifted Greatly During 2021*, Gallup (Jan. 17, 2022), <https://news.gallup.com/poll/388781/political-party-preferences-shifted-greatly-during-2021.aspx> (“With control of the House of Representatives and Senate at stake in this year's midterm elections, party preferences will be a key indicator of which party will be better positioned to gain majorities in the next session of Congress”); see Alex Samuels and Nathaniel Rakich, *Some Early Clues About How The Midterms Will Go*, FiveThirtyEight (Jan. 5, 2022), <https://fivethirtyeight.com/features/some-early-clues-about-how-the-midterms-will-go/> (“While Biden entered the White House earlier this year on a high note (his initial net approval rating was +17 points), his approval has ticked down almost ever since. Currently, Biden’s net approval rating is -8.4 points”); see also Juliegrace Brufke, *Political handicapper predicts 2022 red wave that hands House back to GOP*, CNN (Dec. 31, 2021), <https://nypost.com/2021/12/31/political-handicapper-predicts-2022-red-wave-that-hands-house-back-to-gop/>.

[17] Zeeshan Aleem, *A study shows the filibuster doesn't actually increase debate*, MSNBC (Jan. 31, 2022), <https://www.msnbc.com/opinion/study-shows-filibuster-doesn-t-actually-increase-debate-n1288202> (“Many defenders of the filibuster — from both parties — have taken pride in the filibuster as an indispensable feature of a legislative body whose purported purpose is to slow the law-making process and ensure that policies are improved by consensus-building and input from the opposition. But the absence of any evidence to support that point strengthens what many critics have pointed out for years—that at least in our current era, the filibuster is really just a cudgel used to thwart the majority party”); citing Shu Fu and William G. Howell, *The Filibuster and Legislative Discussion*, Univ. of Chicago (Jan. 18, 2022),

<https://uchicago.app.box.com/s/35gq9vc8c6erwui2iny1vt79nv9i65rp> (investigating “whether the filibuster stimulates public debate and discussion within Congress, as its advocates argue; or whether, instead, it discourages legislators from devoting time and attention to bills they know will not pass, as its critics attest”); see also Rep. David N. Cicilline, *To ensure equality for all, Senate must end filibuster*, The Hill (Oct. 25, 2021), <https://thehill.com/blogs/congress-blog/politics/578240-to-ensure-equality-for-all-senate-must-end-filibuster> (

[18] Rep. David N. Cicilline, *To ensure equality for all, Senate must end filibuster*, The Hill (Oct. 25, 2021), <https://thehill.com/blogs/congress-blog/politics/578240-to-ensure-equality-for-all-senate-must-end-filibuster> (“It used to be that if a senator wanted to filibuster legislation, they had to hold the Senate floor and block the vote by speaking for hours on end without food, water, or even a break to sit down. Today, just the mere mention of a filibuster is enough to stop legislation dead in its tracks”).

[19] *Id.*

[20] *Id.*

[21] Katie Rogers, *'We have no option': Biden calls for changing Senate rules to pass voting rights laws*, N.Y. Times (Jan. 11, 2022), <https://www.nytimes.com/2022/01/11/us/politics/biden-filibuster-voting-rights.html>; *Remarks by President Biden on Protecting the Right to Vote*, The White House (Jan. 11, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/01/11/remarks-by-president-biden-on-protecting-the-right-to-vote/>.

[22] Nancy Beck Young, *History reveals that getting rid of the filibuster is the only option*, Wash. Post (Mar. 12, 2021), <https://www.washingtonpost.com/outlook/2021/03/12/history-reveals-that-getting-rid-filibuster-is-only-option/> (“The filibuster was an unintended consequence that warped the Founders’ vision for the Senate. It has evolved into a commonplace tool used for obstructing the will of democratic majorities, ultimately heightening polarization, distrust and frustration with government. Eliminating it would not be a partisan maneuver. At some future point a Republican president and a Congress narrowly controlled by the GOP will also benefit from the elimination of the filibuster. That’s how democracy should work”);