



THE VIEW

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THE COMING ERA OF GOVERNMENT BY FILIBUSTER

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Do you remember that civics vocabulary that last gave you heartburn during one of those multiple choice social studies tests back in junior high school? You may need to rethink the customary definitions of such old fashioned terms as “majority rule”, “filibuster”, and “cloture.” That is because if you leapt to the definition that said majority rule means that the winners in a democratic system are those who can get a vote of 50% plus one for their cause, then you may be only partially right if correct at all.

If you understand why this bedrock belief undergirding the functioning of a democracy like that in the United States may not be so certain then you will begin to understand why Democrats are distraught at the prospect of “only” having an 18-seat majority in the 100-member United States Senate. Conversely, if you choose to view things from the other side of the aisle, then you will know why Republicans are positively “giddy” at only being on the short end of the Senate party identification contest by a 59 to 41 count. With increasing frequency, majority rule means the winner must gain 60 votes out of the 100 Senators to be successful.

The “filibuster” is maneuver that has throughout history made for interesting political lore in the U.S. Senate. In this day of steadfast party discipline and staunch partisanship, it is becoming the order of the day rather than the exception that it once was. The term filibuster refers to a tactic employed by senators and congressmen in the past to delay or buy time by refusing to yield the podium and to continuously speak on the subject in hopes of killing or passing legislation. Anyone who remembers the classic movie *Mr. Smith Goes to Washington* certainly remembers the scene where the freshman Senator played by Jimmy Stewart was determined not to give up on his cause without a fight so he stood in the well of the Senate and spoke until he passed out. It was in 1872 that Vice President Colfax

proclaimed that the presiding officer could not restrain remarks by a Senator that he considered pertinent to a pending issue. In 1957 Senator Strom Thurmond of South Carolina, in an attempt to block the Civil Rights Act of 1957, set a filibuster record of holding the floor and speaking for 24 hours and 18 minutes straight.

Over the course of filibuster history, rules of the Senate have been added and refined to bring us to where we are today in the ability of a filibuster to effect the course of legislation. Chief among these modifications is the “cloture” rule. Members are no longer required to remain in the well of the Senate and speak continuously, but rather debate is scheduled over periods of time and such debate will continue to be scheduled until those who wish to end debate and move toward a vote on a measure can muster a vote of three/fifths, or 60, members to request that debate be ended. This is the essence of Senate Rule 22, the Cloture Rule. Before last Tuesday’s “Off, Off Year” election in Massachusetts the Democrats owned that 60-vote majority, and had used it to position themselves to pass the nation’s first comprehensive health care legislation. When the sun rose on Wednesday the Democrats could no longer guarantee the ability to end debate, and hence move to a crucial vote on legislation of this or any other kind.

Given the current conditions of hyper-partisanship, what are the implications as we attempt to move forward? First, party discipline has rarely been as strong as it is now. Republican leadership, as well as that of the Democrats, is exerting ironclad control over the actions of their members, particularly if there is the least tendency toward bi-partisanship. The Democrats were outraged at threats made by Independent/Democrat Joe Lieberman to side with Republicans without certain concessions by the Democrats on health care legislation. By the same token, Republicans were incredulous at the prospect of South Carolina Republican Lindsey Graham’s flirting with a cooperative relationship with Democrats over climate legislation. If partisan conditions remain as they are, it will be virtually impossible to close off debate and bring any meaningful legislation to a vote. In fact, prior to the 2008 elections it had been nearly thirty years since either party has had a majority large enough to assure cloture. Thus, if each party continues to insist that none of its members can collaborate legislatively with any member of the other party then we will have arrived at another breed of gridlock.

Also of interest, thanks to last week’s holding by the United States Supreme Court in *Citizens United v. Federal Election Commission*, the stakes of votes taken by members of Congress have been increased dramatically. In that case, the court took all restrictions of corporations and associations such as labor unions away from campaign advertising. As if towing the party line was not mandatory enough already, imagine what it will be like when a conscientious vote honestly taken results in a multi-million dollar contribution from a corporation to one’s Republican opponent or a similar contribution from a labor union to the Democratic opponent of a Republican. Things are about to get interesting.



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