

**Testimony of Norman J. Ornstein
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**Before the
Committee on Rules
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Chairman Schumer, Ranking Member Bennett, members of the committee. I am pleased and honored to be invited to testify again on issues related to the filibuster and other Senate rules and their implications for the Senate, other institutions, and the fabric of governance in America.

First, let me reiterate a point I made in my testimony in May, and have made in other venues, including my column in Roll Call and in magazine and newspaper articles. I do not favor eliminating Rule XXII, reducing the bar to fifty, or making the Senate as “efficient” as the House of Representatives. I believe that a Senate where a minority of members, feeling intensely about an issue of great national moment, can find ways to raise the bar, to retard action, and to force extended debate. But the filibuster should be reserved for a smaller number of issues of great national concern, and should require the active participation of a substantial group of senators making up that minority—and not allow an individual or a small group merely to raise a little finger either to raise the bar from a majority of those voting to sixty senators, and to abuse or stretch the rules simply for the purposes of delay and obstruction.

There are many ways to preserve that Senate tradition of protecting minorities where they feel intensely about important issues, while also eliminating barriers that are now used overwhelmingly for delay or obstruction. One simple way is to *eliminate the filibuster on the motion to proceed*. There is no good reason to allow more than one bite of the apple when a minority of senators signal a filibuster—if the bar is raised to sixty or whatever super-majority number, it should apply once. I know that there are ways to avoid filibusters on motions to proceed, but majority leaders have found that using the morning hour to do so involves significant costs. Motions to proceed, in my view, should be non-debatable, or with at most an hour of debate. At the same time, I see no reason why filibusters should be allowed on both a bill and a substitute for it that gets adopted. *If a substitute is adopted after overcoming a filibuster, the underlying bill should be voted on without another filibuster being in order.*

In a related area, I recommend *eliminating the third bite at the apple via a filibuster on going to conference*—I would make all motions relevant to initiating conferences subject to strict limits on debate, perhaps four hours evenly divided. And by that, I do not mean four hours on each of several motions related to a conference, but four hours in toto.

Another way is to *streamline the process for cloture motions and to make post-cloture time work more efficiently*. On the former point, I see no good reason why the Senate needs two full days for a cloture motion to ripen; one day should suffice. On the latter, I would offer a few ideas. One is to take the thirty hours of post-cloture debate and divide it evenly between the

majority and the minority. A second is to require that senators actually debate during that period—and that quorum calls count against a senator's hour of debate.

There are other areas within Senate rules that can also be altered to reduce unnecessary delay and obstruction for obstruction's sake. One is the process of requiring amendments to be read in toto by the clerk—if an amendment has been available to senators for 24 hours or more, reading it aloud serves no purpose other than obstruction. *The Senate should allow a non-debatable motion to end the reading of an amendment if it has been available on-line for 24hours.*

There is also no reason anymore to require committees to ask permission to meet outside of morning hours—making them suspend their business when the Senate is in session is disruptive and annoying, and truly unnecessary.

Now let me turn briefly to the other side of the coin—the justifiable frustration many members of the minority feel about the propensity of majority leaders to act preemptively and fill the amendment tree to shut out amendments. In previous hearings, including the one in which I testified, this committee has had fruitful and interesting discussions of this problem, and the chicken-and-egg question that arises about the sharp increase in cloture motions and whether they are due to minority obstruction or majority high-handedness. There is no simple answer here, but I do want to note that while some of the filibusters in recent months have clearly been in response to the premature use of the amendment tree by the majority leader, there are way too many instances of delay tactics used on measures or nominees that achieved unanimous or near-unanimous support, with the multiple filibusters and full exercise of the thirty hours post-cloture that had nothing to do with real minority grievances and everything to do with using up more of the Senate's precious time.

But that is no excuse for avoiding the real issue about overuse and misuse of the amendment tree. I would make the following suggestion here, one I have discussed, as with many other of the recommendations above, with your colleague Mark Udall, who has been among many senators, including members of this committee like Tom Udall, who have worked very hard to find reasonable and balanced ways to make the Senate function better while retaining its core values. Let me note that this issue is complicated enough that I would want a lot of consideration of how to frame a rules change here, including weighing possible unintended consequences, before acting. The idea, of course, is to strike a different balance, giving the minority the opportunity to offer a different approach and to debate it, while also giving the majority a chance, after a debate, to table that idea, and to limit the use of the amendment process to flood the zone with extraneous amendments. One approach is to have a new, non-debatable motion to set aside a filled amendment tree and allow, by a simple majority vote, a single amendment from the minority to be called up and debated. The majority could of course still offer a motion to table; ideally, the rules would allow some debate on the amendment before the motion to table.

I am of course happy to discuss these ideas and others, including thresholds for filibusters and cloture.