

Summary

Martin Paone

For the hearing entitled

Examining the Filibuster: Ideas to Reduce Delay and Encourage Debate in the Senate

September 29, 2010

Many suggestions are available for possible Rules changes to reduce delay and encourage debate. Such as the following:

-The elimination of debate on the motion to proceed .

-More efficient time management during the 30 hours post cloture, possibly through the counting of quorum calls against a member's time or by counting it at an accelerated rate. Others deal with guaranteeing amendments post cloture, ensuring that there is true opposition to nominations which are the subject of delay; and automatically considering a substitute amendment germane to the pending bill.

-Collapsing the process to send a bill to conference from three motions to one and permit a shortened cloture process thereon.

In addition: comments on why Majority Leaders from both parties have used their priority recognition to "fill the amendment tree".

Testimony of

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Submitted to the

U.S. Senate Committee on Rules and Administration

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Mr. Chairman and members of the Committee:

I'm honored to be here discussing the procedures of the Senate, a subject that I learned to cherish while working for Leaders Byrd, Mitchell, Daschle and Reid. I served on the Senate floor for almost 29 years. During that time I was Secretary for the Majority twice and Secretary for the Minority twice. --I had two sets of cards depending on the election.

Following an election, if there was a change in the Majority, I would joke with my Republican counterpart that, in addition to handing over the presiding book, we would also trade speech folders:

One accused the other of being an obstructionist;

While the second complained of the trampling of the Minority's rights.

Today it is my understanding that you will be focusing on four aspects of filibuster reform.

Motion to Proceed:

Eliminating debate on the motion to proceed would save time and put the legislative calendar on an equal footing with the Executive Calendar.

A middle ground would be to institute a time limit on the motion to proceed. Any modification of this motion would streamline the operation of the Senate but for just that reason could be expected to be met with minority opposition.

Post Cloture Time:

During the 30 hours post cloture each Senator is entitled to speak for up to one hour. One member can still cause considerable delay because quorum calls, while counting against the 30 hours, do not count against the member's hour. While you can force the opponent to remain on the floor or else the chair will put the question, you cannot force them to debate and consume their hour. One possible change would be to charge the quorum time towards the senator's hour.

An alternative idea would be to count any time consumed in a quorum call at an accelerated rate, say a multiple of 10, so that every minute spent in a quorum call would count as 10 minutes. If this were the rule then during post cloture time I would also eliminate the ability to object to the dispensing of a quorum so that the Majority could not abuse this accelerated clock.

Over the years the process has evolved so that once cloture is invoked the amendment tree remains filled and even germane amendments are blocked out. One suggestion would be to automatically tear down the tree post cloture and to provide for a guaranteed number of amendments from each side. The amendments would still have to qualify under rule 22, -- be timely filed, properly drafted and germane.

Other possible changes include the reduction of time on nominations, since they are unamendable; adding a 3/5's vote to reduce the time; or reducing the threshold to invoke cloture to 3/5's of those voting.

There have been complaints about the waste of time spent on nominations that are eventually confirmed by nearly unanimous votes. One change, for nominations with lifetime appointments, would be a reverse cloture motion.

It would work like this: the Majority Leader would ask consent to confirm a nomination or to get a time limit on it. If there is an objection than the next day by 4 pm the opponents would have to file a “motion of opposition” which would state that they intend to vote against the nomination. Sixteen signatures, the same as for cloture, would be required on that motion and if it is not filed by the appointed time the Senate would then proceed to the nomination and it would be considered under a time limit of two hours, equally divided. If the 16 signatures in opposition are secured then the Majority Leader could file a cloture motion on the nomination which would ripen the next day.

Substitute amendments: It is virtually impossible for a committee substitute or a floor substitute to meet the strict germaneness test of cloture. This necessitates the filing of cloture motions on the substitute and on the bill itself. The later is a true waste of time since once the substitute amendment has been adopted the bill is no longer amendable. The substitute amendment should be automatically considered germane.

The appointment of conferees:

It takes three separate debatable motions to send a bill to conference. Many times in the past these were adopted by consent. But over the years both parties have objected to the appointment of conferees and now it is the exception rather than the rule to see a bill sent to conference. Combining the 3 motions into one would still allow the opposition to filibuster this stage of the process.

This might also reduce the use of the message between houses method or what has come to be known as the “ping pong” process. If this process is to be used more sparingly then not only should the motions be combined but there should

also be a prompt cloture vote and a reduction in post cloture time. If the Minority truly wants to participate in conferences then they should allow the appointment of conferees.

Filling the amendment tree:

Everyone agrees that the Majority Leader has priority recognition. It follows then that the Majority is entitled to the first vote on a given issue. Majority Leaders from both parties have filled the amendment tree to get a first vote on an issue, and sometimes on more than one issue. However, at some point in order to move the process along, the Majority Leader has to pare back the tree and allow other amendments. If amendments are not allowed then the Minority's natural response is to vote against cloture as a protest for being shut out of the amendment process.

Majority Leaders from both parties have been asked by their members to protect them from certain votes. In my opinion that is an unfair request and it puts the Leader in an untenable position of having to fill the amendment tree and possibly fail to enact the legislation in question. The solution to this is simple—don't ask the Majority Leader for such protection. Senators should be prepared to vote, at least on a cloture vote or a budget waiver vote, with respect to any and all amendments and move on.

Again I thank the Committee for this opportunity this morning and I welcome your questions.