

TESTIMONY OF SENATOR TOM HARKIN
SENATE RULES COMMITTEE
EXAMINING THE FILIBUSTER: LEGISLATIVE PROPOSALS TO CHANGE SENATE PROCEDURES
WEDNESDAY, SEPTEMBER 22, 2010

Chairman Schumer, Ranking Member Bennett, members of the Committee, thank you for the very kind invitation to speak today regarding the need for filibuster reform, and in particular the resolution I have introduced to reform the cloture procedures in the Senate.

As you know, my proposal is identical to one I first introduced in 1995, when Democrats were in the minority. My belief then, as it is now, is that elections should matter. A majority of the people's representatives, after ample deliberation, should be able to legislate and govern.

At the outset, I commend you for the thoroughness with which you have examined this issue. I will not repeat the exhaustive testimony you have already heard on the history and increasing abuse of the filibuster. I will only add that I have been a member of this body for nearly twenty-six years. I have served in the majority and minority. The current abuse of the filibuster is like nothing I have seen before. As scholars have testified, the minority, including Democrats when they were in the minority, has abused the filibuster in recent years at a level without precedent in the history of this body.

Let me state unequivocally, I agree wholeheartedly with the vital need to ensure the minority a voice in the Senate so that the voices of all Americans are heard and that this body operates in a manner that not only protects the right of debate, but fosters deliberation and the exchange of ideas.

But, I believe we can protect minority rights in the Senate without giving a minority of as few as 41 senators veto power over any nominee or legislation.

The fact is the filibuster as currently used has nothing to do with ensuring debate or deliberation and everything to do with obstruction and delay.

Mr. Chairman, as you have heard from prior witnesses, in this Congress the filibuster has been used to block, for months, confirmation of nominees or passage of bills that were ultimately approved unanimously. The minority has used the filibuster to block motions to proceed, preventing even consideration of a bill. In other words, because of the filibuster, the Senate – the world’s “greatest deliberative body” – has been prevented from even debating, let alone addressing, important national issues.

Because I do not believe the Senate can continue to function this way, I have introduced legislation to amend the Standing Rules of the Senate to permit a decreasing majority of Senators, over a period of 8 days, to invoke cloture on a given matter.

Under my proposal, a determined minority could slow down any bill for as much as 8 days. Senators would have ample time to make their arguments and attempt to persuade the public and a majority of their colleagues. This protects the rights of the minority to full and vigorous debate and deliberation, maintaining the hallmark of the United States Senate.

At the same time, this reform would restore a basic and essential principle of representative democracy: majority rule in a legislative body. At the end of ample debate, the majority should be allowed to act; there would be an up-or-down vote on legislation or a nominee. As Henry Cabot Lodge stated, “[t]o vote without debating is perilous, but to debate and never vote is imbecile.”

At an earlier hearing of this Committee, our former colleague Don Nickles opposed filibuster reform. He stated his belief that the filibuster – and I quote – “forces compromise and collaboration.” I strongly disagree with him. The fact is that, right now, the minority has no incentive to compromise. Not only do they know that they have the power to block legislation,

but then they can campaign on the message that the majority party could not pass bills. In other words, the minority has a great deal of power but very little accountability.

In contrast, I believe my proposal would encourage a more robust spirit of compromise. If the minority knows that at the end of the day, a bill is subject to majority vote, they will be more willing to come to the table and negotiate seriously. Likewise, the majority will have an incentive to compromise because they will want to save time, and not have to go through numerous cloture votes over a period of 16 days, plus 30 hours of post-cloture debate.

Mr. Chairman, there is nothing radical about the proposal I have introduced. There is nothing sacrosanct about requiring 60 votes to end debate. The filibuster is not in the Constitution. And, until 1806, the Senate had a rule that permitted a simple majority to stop debate on the pending issue and bring an immediate vote.

Further, my legislation stands squarely within a tradition of updating Senate rules as appropriate to foster an effective government. Article I specifies that “[e]ach House may determine the rules of its proceedings.” Using this authority, the Senate has adopted rules and laws that forbid the filibuster in numerous circumstances, for example with respect to the budget. And, since 1917, the Senate has passed four significant reforms concerning cloture.

In conclusion, I want to emphasize one fact. I have introduced my proposal, this year, as a member of the majority party. As I said, the proposal, however, is one I first introduced when I was a member of the minority party. Thus, to use a legal term, I come with clean hands. So, I want to make clear that the reforms I advocate are not about one’s party gaining an undue advantage. It is about the Senate as an institution operating more fairly, effectively and democratically.

Even though I was in the minority in 1995, I introduced this legislation then because I saw the beginnings of an arms race, where each side would simply escalate the use of the filibuster. And, sadly that is what has happened, and will continue to happen. It is time for this arms race to end.

Mr. Chairman, the Founders adopted a Constitution to enable the American people, through their elected representatives, to govern. As Chief Justice John Marshall made clear, any enduring Constitution must be able to “respond to the various crises of human affairs.”

Unfortunately, I do not see how we can effectively govern a 21st Century superpower when a minority of just 41 senators can dictate action – or inaction – to a majority of the Senate and the majority of the American people. This is not a representative democracy. Certainly, it is not the kind of representative democracy envisioned and intended by the Constitution.