

"Put deliberation back in the World's most deliberative body"

Congressman Trent Franks

Are you alarmed at the direction of America and the world under the leadership of Barack Obama? Are you frustrated at the seeming weakness or unwillingness on the part of Republicans to effectively respond? If you are truly interested in knowing the main reason for relentless gridlock in Washington D.C., and a proposed possible solution, please read the following from start to finish.

One of the most insidious and hidden-in-plain sight secrets of the United States Congress is the rules and practices in the United States Senate controlling the parliamentary instrument of the "Motion to Proceed to Consider".

If unanimous consent cannot be achieved - the explicit or implicit concurrence of each of the 100 Senators - nearly all legislation of any kind then requires invoking cloture on a "motion to proceed to consider" before it can be "pending before the Senate" and debated, and another "Motion to Proceed" before it can be voted upon in the U.S. Senate. Meaning most legislation in the Senate is subject to not one, but at least two, "filibusters" of this type which does not require a particular Senator to openly "hold the floor".

Invoking cloture on a Motion to Proceed to Consider, currently requires 60 Senators to vote "Yes", even if there are only 60 Senators on the floor voting. Overcoming this Democrat engineered parliamentary rule from 1975 determines if there can be a true or "real" legislative vote in the U.S. Senate.

Republicans currently hold a 54 – 46 majority in the Senate. However, even if all 54 Republicans vote "Yes" on the Motion to Proceed, at least 6 Democrats must also come to the Senate floor and vote "Yes" in order to proceed. If at least six Democrats decide not to come to the floor and vote "Yes", the motion is defeated. This rule denies the Majority in the United States Senate the essential capability to start or end debate or hold an actual vote, even on critical, life and death legislation that may be supported by the overwhelming majority of Americans.

In recent years, the Senate minority has used and abused this "Passive Filibuster" to allow them to exhaust the Senate and stop almost any significant legislative process in the Senate. This is done not by "holding the floor" in a traditional Mr. Smith Goes to Washington black and white scene or a present technology live 'FULL HD' filibuster, but by privately noticing their leadership of reservations or threats to filibuster, which in effect, invokes a secret or anonymous hold out of sight of the American people. Even if settled, they can delay Senate business, via other motions such as objecting to a request to consider business on the Senate floor, voting no on the Motion to Proceed, or preventing consideration by simply doing absolutely nothing and refusing to vote at all. **How could we ever come up with a more perfect recipe for gridlock?!**

In other words, **by doing absolutely nothing**, with almost no accountability, the minority in the U.S. Senate can easily and nearly always prevent “the world’s most deliberative body” from actually “deliberating” no matter what the majority says or does.

Consequently, the balance between the opportunity to deliberate or debate and the ability to actually make a decision no longer exists, because Senate Democrats have deliberately eroded this fundamental equation. Without accountability, they have relentlessly abused this parliamentary instrument of the “Motion to Proceed” to stalemate the U.S. Senate and undermine the Constitutional lawmaking process of this Republic.

Democrats know that the American people (even the esoteric Republican base), are largely oblivious to this subterranean leverage they so routinely abuse, since the media never seem to report on this “Elephant in the Room.”

Senate Democrats abuse of the rules and practices has allowed them to repeatedly force the House of Representatives, and especially its leadership, to either pass legislation that Democrats completely agree with, or allow Democrats to shut down the government by not allowing appropriations and other consequential bills to be either debated or voted upon.

A government shutdown is not a deterrent to Democrats, it is actually an inducement. Senate Democrats know the media will make sure House Republicans are blamed for the shutdown, even if Republicans have actually already passed legislation that would fully fund the particular government agency and keep it fully operational.

The determined objective of Democrats leading up to the next election is to engineer an extended government shutdown, blame Republicans, and then increase and exploit the frustration and dissension among the Republican base.

Democrats have done extensive polling, and they know a government shutdown gives them great leverage to retain the Presidency and gain control of the U.S. Senate in next year’s election. This also allows them control over the presidential appointments, to gain complete control of the US Supreme Court, and to turn what’s left of the U.S. Constitution into vapor.

This existing Senate rule, with virtual impunity, allows Democrats to force Republicans to either “cave” on all Republican principles and legislation by tailoring legislation to Democrat specification in order to obtain a vote in the Senate, or being powerless to stop a government shutdown for which Republicans will be unjustly, but entirely, blamed.

To the outside world, this portrays Republicans as being weak and unwilling to fight. Understandably, given the disastrous direction of the country and the world under Barack Obama’s leadership, the Republican base is deeply concerned and frustrated at the seeming unwillingness of Republicans to resist this grave danger.

While this is a completely false conclusion (which delights Democrats), it is the primary reason for the internecine dissension in the Republican Party, and why Republican leadership has become so unpopular, thus leading to the Speakership upheaval in the House. Astonishingly, it

has all happened with very few, inside or outside the process, being truly aware of the core cause. It is an ideal recipe to force Republicans back into the minority in the U. S. Senate.

Ironically, the **House has successfully passed almost every major piece of legislation supported by the Republican base**, only to see those bills fail each time to be allowed a debate or a vote in the U.S. Senate for the lack of 60 votes necessary to pass the “Motion to Proceed!”

This is a stranglehold no party, Republican or Democrat, should have on the Constitution or the American government. It makes a mockery of checks and balances.

The American people have been alarmed for some time by the gridlock and lack of transparency and responsiveness in Washington D.C., but are just now beginning to become aware of the reason for it. Republicans inside Congress are also beginning to clearly realize that the chief factor causing dissension among themselves is the relentless abuse of this “Passive Filibuster” by Senate Democrats.

The process of exposing the abuse of the Senate rules and practices is underway. There is growing traction in both Chambers of Congress to address this problem. Time will tell whether the full realization of how negatively this abuse has dramatically affected the country will become clear, and whether the will to do what will be necessary to address it will manifest.

There are only two primary ways to address this boot standing on the throat of the Constitution, the American government, and ultimately, the American people. The rules and practices must be either altered, or the abuse of them must be raised to such a high public profile that it becomes no longer politically tenable to continue that abuse. We must do both.

The technical remedy to fix the mechanical workings of the Senate is to adopt a change in the rules that will satisfy both the majority and minority, prevent gridlock and allow consensus and the spirit of bi-partisanship to return.

We could accomplish this by changing the present Senate rules to allow the majority to bring a bill (either an appropriations bill or a regular bill) to the Senate floor through a non-debatable Motion to Proceed to Consider requiring 51 votes for passage while simultaneously allowing the minority to offer a reasonable number of germane amendments to the bill that would then be pending for consideration before the Senate.

After the current required provision for up to 30-hours of debate, under the new rule, the minority would be allowed to initiate and extend a “traditional standing & talking filibuster” and transparently “hold the floor” by rotating with their amenable colleagues for up to an additional collective maximum of 100 hours on any one bill at the end of which a cloture vote by a simple majority could then invoke cloture and require a vote on passage. Only a petition of 60 Members of the Senate could truncate the prescribed time.

The majority should be afforded the prerogative to “pull the bill” at any time during this described process.

The suggested 100 hours, along with the number of minority germane amendments allowed, could be reduced or extended at the time that the rule change is negotiated and adopted to ensure

that the appropriate center between sufficient adversarial debate and the prevention of chronic stalemate is determined on a bipartisan basis.

Such a process adequately allows the Senate to meet its constitutional responsibilities in a timely fashion and effectively respond to national needs, while keeping a strong incentive to reach consensus in the Senate and still preserve the minority's opportunity to have leveraged objection to any overreach on the part of the majority; or if the minority feels further debate and clarity on a given agenda item was particularly important to the country.

These proposed changes to the existing operation of the cloture rule, in an irony of all ironies, would also restore the original purpose of the 60 vote requirement, which was to allow the Senate to eventually reach a vote, rather than the current practice of empowering the minority to passively prevent a vote indefinitely.

To effect a change in the rules of this nature would require a two thirds vote in the Senate which obviously would be more difficult than overcoming the 60 vote Motion to Proceed threshold. However, if the Senate majority leader were to choose the right opportunity to invoke the "nuclear option" (the recent Iran nuclear deal would have been the perfect opportunity), the rule would revert to 51 votes needed to schedule and hold a vote. At that point, the present majority would have significant leverage to negotiate and gain the necessary two thirds vote for the suggested permanent change under the Senate rules.

There are those who would, in the elitist name of "Senate Tradition", oppose the changing of the Senate rules as discussed because they refuse to acknowledge that polarization and change in modern behavior have precipitated a virtual stalemate in the Senate under its current rules, and that it also conveniently allows all Senators to avoid the "tough votes."

There are also those who have gained great political leverage by knowingly exploiting the ubiquitous ignorance of the actual effect of the current rules and practices. Thus, they are allowed to expound upon "the weakness of present leaders and how they are themselves much more committed to a given ideal and would do it differently" when in reality they offer no actual solution.

The most often quoted objection to changing the rules and practices is that the filibuster has also empowered Republicans to stop dangerous policy and overreach when they were in the minority. This is undeniably true. However, the argument is extremely one-dimensional since it does not take into account the long-term advantage to the country of requiring Democrats (both parties to be sure) to actually own and be accountable for their actual positions and the performance of their policies.

This perspective also overlooks the historical record that Democrats are far more willing to abuse the "passive filibuster" than are Republicans. For example, when Republicans were in the minority, they were unsuccessful at using the "passive filibuster" to block Obamacare even when the clear majority of the American people supported the Republican position.

However, Democrats in the minority were completely successful at using the “passive filibuster” to prevent a vote to reject the dangerous Iranian nuclear deal even when the American people were overwhelmingly against the deal and national security was at risk.

Given the present circumstances and direction of this country, if, in actual practice, the “passive filibuster” allows Democrats in the majority to pass the worst of legislation and prevents Republicans in the majority from passing or even debating the most critical of legislation, it is vital to change that equation.

By continuing to stand idly by while Democrats use the filibuster to stoke the growing rage inside the Republican base against their own leaders, Republicans in the Senate hasten the day when they will indeed put themselves back into the minority (perhaps more permanently) during which the Democrats will not hesitate to force changes in the filibuster for anything and everything on their agenda.

The present filibuster rules have made the United States Congress impotent against a rogue president who justifies ignoring the Constitution and making his own law with the arrogant and profoundly ironic argument that Congress “is failing to act”.

The Congress is even robbed of its most powerful Article 1 leverage, the power of the purse, since the minority, **by doing absolutely nothing**, is empowered by the present filibuster rules to either dictate all Congressional appropriation formulas or force a government shutdown for which Republicans will be blamed.

In almost any endeavor in life, control without responsibility incites chaos and irresponsibility, and to have responsibility without control creates injustice and makes accountability impossible.

One of the most important, foundational principles of our government is the intrinsic accountability sewn into its sinews by the founding fathers. The checks and balances they created allow the people to hold their representatives accountable for their actions. If this is a sound principle, it is then incumbent upon us to foster systems and processes that clearly, specifically and accurately assign the official actions of representatives and parties accordingly so that accountability is possible.

The aforementioned proposed solution would require those effecting an extended filibuster to actively “hold the floor”, and the profile, awareness and public scrutiny of the subject being debated would be dramatically increased, whereas the present “passive filibuster” does the exact opposite.

There are also those who will say that the suggested change in the rules affords no advantage to a Senate majority when the sitting president is of the same party as the Senate minority (as is the present circumstance). After all, it would take an even smaller number of Senators to sustain a veto than it does to passively prevent the motion to proceed from passing.

However, this argument entirely misses the central point of making changes in the rules and practices. If the President openly vetoes a particular piece of legislation, **the entire world clearly knows who is responsible** for the failure of that legislation. Whereas, under the present

rules, responsible legislation that falls prey to a failed Motion to Proceed is now sincerely perceived by vast numbers of the electorate to be weakness and lack of commitment on the part of the majority in Congress. This misplaced culpability is of strong advantage to Democrats since they have shown the greatest willingness and dexterity to effectively exploit it.

By changing the rules and practices as discussed, the entire paradigm of responsibility and accountability is acutely changed 180°. The voters now have clarity, and true accountability is dramatically increased.

It is an often missed truism that the more the American people become informed on a given issue, the more likely it is that principled and wise legislation will succeed, and the more difficult it becomes to force unprincipled and unwise legislation upon enlightened citizens.

The very bottom line is that a traditional “Hold the Floor” filibuster rule rather than the present “Passive Filibuster” would maintain reasonable deliberation and a strong incentive for consensus while preventing stone-cold gridlock in Washington D.C. And it would far more effectively inform the electorate to be more aware and derive logical conclusions and decisions. The electorate could then more accurately assess the two political parties’ positions and performance. This would be political anathema to those seeking temporary political gain, rather than the long-term best interests of the country, especially over time.

We live in a day when mindless polarization seems to make conscientious, truth-centered debate impossible. There are those who believe that the modern Left is no longer capable of being persuaded on the basis of principle or statesmanship and that only a threat to their political survival moves them. A process change like the one posited in this treatise (and there certainly may be more well considered strategies to accomplish the same thing), would increase both moral and political accountability in America’s government.

Unless clarity and accurate accountability make a comeback in America’s government, the American people may unwisely declare a pox on both Chambers of Congress and give up. If that happens, future generations, along with the Founding Fathers’ dreams for all that America might someday be, will be at profound risk.