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WEBINAR  
DEBATING THE FUTURE OF THE FILIBUSTER

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## P R O C E E D I N G S

MS. REYNOLDS: Good afternoon, everyone. Thank you for joining us for this debate on the future of the filibuster today. My name is Molly Reynolds and I am a senior fellow in the Governance Studies Program here at the Brookings Institution.

As we begin a new presidency and see partisan control of the Senate switch, Democrats are enjoying unified party control of Washington for the first time in roughly a decade. But the prospects for action on many Democratic priorities are potentially threatened by the Senate filibuster or the effective requirement that 60 votes are needed to cut off debate on most legislation in the chamber.

We have seen the debate over whether to maintain the filibuster rule take center stage in these opening weeks of the new Congress as now Senate Minority Leader Mitch McConnell has threatened to prevent the new Democratic majority from organizing the chamber unless now Majority Leader Chuck Schumer promises not to use the so-called “nuclear option” to eliminate the filibuster on legislation in this Congress.

This debate over whether to keep or jettison the filibuster is not new, but it is especially timely. To unpack the arguments for and against reform I’ve invited two colleagues to join me here today for a debate.

Arguing in favor of keeping the filibuster is Richard Arenberg, who is the director of the Taubman Center at Brown University and a senior fellow at the Watson Institute for International and Public Affairs there. He spent 34 years on Capitol Hill in senior staff positions with Majority Leader George Mitchell and Senators Carl Levin and Paul Tsongas.

Arguing in favor of eliminating the filibuster is Carlos Algara, who’s an assistant professor of political science at the University of Texas at El Paso. In 2019 and 2020, Carlos was an American Political Science Association congressional fellow in the office of Senator Jeff Merkley, a Democrat of Oregon and a long-time proponent of filibuster reform.

I will begin with opening statements from Carlos and then from Rich, followed by responses from each, during which each will be welcome to pose questions to the other. From there I will

offer some questions to which each will respond. And then we will turn to questions from the audience.

Viewers, you can submit questions for the speakers either by emailing [events@brookings.edu](mailto:events@brookings.edu) or via Twitter using the handle @BrookingsInst by using the hashtag #FilibusterReform.

So, again, thank you all for joining us. And, Carlos, I will ask you to begin with your opening statement.

MR. ALGARA: Great. Well, thank you so much, everybody, for joining us. Thank you, Molly and Brookings, for putting this together. And thank you, Rich, for a great conversation that we're going to have regarding the future of the filibuster.

The way I sort of approach and orientate myself towards this question as a political scientist is really understanding the fundamental nature of the United States Senate. And to understand that nature it's impossible to escape the notion that if you were to design democratic legislatures or democratic institutions, you'd be hard-pressed to design an institution today that looks like the United States Senate: 100 senators representing 50 states in an institution that fundamentally distorts the value of a vote across the country.

But today's not a discussion about should the Senate itself be abolished or not. Today's a discussion about what do transaction costs for legislating look like in the United States Senate? Currently, aside from nominations and legislation that can be passed with simple majority through budget reconciliation, the Senate currently requires 60 votes, of course, to invoke cloture and to consider a piece of legislation on the floor of the Senate.

Of course, 41 senators can filibuster, and they have historically, to stop the will of the majority to consider legislation. Fundamentally, in the words of E.E. Schattschneider, I think that fundamentally distorts responsible party government. And that is the ability of parties to gain majorities and to gain coalitions across multiple avenues -- the presidency, the House of Representatives, and the Senate -- to be able to legislate and to fulfill the will of their people given their mandate.

And the filibuster ultimately allows individual senators to potentially dodge very tough

votes and obfuscates the ability of citizens to reward or punish majorities on their basis of delivering their campaign promises.

Another key tenet of what I hope that we discuss today is looking at the geographic distribution with the United States Senate and looking at a diversifying America. It's no secret that the Senate is skewed towards white, rural interests at the expense of more diverse and urban states. And it's also not surprising that currently 50 Republican senators represent about 43% of Americans.

The real question is, do we allow a minority that's increasingly out of step with diversifying America a veto point on legislation given the parameters of the majority? So, I'm looking forward to a discussion today and really looking forward to unpacking what it means about the filibuster, potential cost of repealing it given that no party's in the majority, you know, forever. And I'm really looking forward to really discussing the Senate as a whole, as well.

So, thank you, everybody.

MS. REYNOLDS: Thank you, Carlos.

Rich, over to you.

MR. ARENBERG: Great. I thought of wearing my Bernie mittens today, but it was a little warm in this room, so I didn't do it. I want to thank Molly and Carlos and the audience for being with us today and looking forward to this discussion of the future of the filibuster.

Often forgotten or dismissed is the role that extended debate has played in giving voice to minorities and protecting the moderating role of the Senate. In these times of extreme partisan polarization, this role is more, not less, important. In the U.S. Senate no minority can be silenced for long. The views of a legislative minority, even a minority of one, can be heard and have its proposals raised and voted on. The filibuster is fundamental to the protection of the minority's right to debate and offer amendments. It fosters negotiation, moderation, and compromise.

While the focus is usually put on the use of the filibuster to obstruct, it's the existence of the filibuster as part of the Senate's DNA that is most important. When crafting legislation, all senators must consider the opposition and they must compromise to accommodate others' interests and concerns

in order to avoid a fight that stalls or even kills legislation.

In the 34 years I spent in the Senate, any time I brought a legislative proposal to any one of the three senators I worked for, the very first question I was asked was who's my Republican co-sponsor? That's not a question that gets asked in the House of Representatives. This has made the Senate a unique body for more than 200 years.

De Tocqueville in 1835 wrote, "If ever the free institutions of America are destroyed, that event may be attributed to the omnipotence of the majority." This echoed John Adams, who about 40 years earlier than that said, "Mankind will in time discover that unbridled majorities are as tyrannical and cruel as unlimited despots."

Unintended consequences often result from dramatic role changes. This lesson should have been -- should already have been learned by the Democrats. In 2013, they used the so-called nuclear option to eliminate the filibuster rule relevant to District and Circuit Court judges, and did so basically by violating Senate rules. This opened the door for Republicans to extend the precedent four years later to include Supreme Court nominees.

This has been a disaster for Democrats. President Trump was able to place 231 lifetime federal judges on the bench without any -- basically any involvement or consultation with Democrats, including three Supreme Court justices, two of whom probably would not have been confirmed had the filibuster still been in place.

The solution -- well, having said this, I want to acknowledge that, as I always have, that the filibuster has been abused in recent years. Absent is the kind of restraint which senators have historically shown using the filibuster sparingly. When I first got to the Senate, senators were very conscious of that and often withheld using the filibuster because they feared that its overuse would lead to the loss of that tool for senators.

I believe that the solution to this abuse is to mend the filibuster rule, not to end it. And I do support bipartisan reform and I hope we'll talk about that during the course of our conversation.

Let me just close by quoting Harry Reid, who's become somewhat of a leader of the

Dump the Filibuster movement in the Democratic Party. Senator Reid said, "The last check we have against the abuse of power in Washington is the filibuster."

MS. REYNOLDS: All right. Thank you, Rich.

Carlos, I want to give you first a chance to respond to anything that Rich said in his opening statement. And then I'll give you the same opportunity. Go ahead, Carlos.

MR. ALGARA: Yeah. No, it was a great opening statement. It was very interesting, you know, to hear the argument.

You know, I think there's some agreement here. And what I think that agreement is fundamentally that, of course, the filibuster today is being abused. There's no question about that. It's sort of bipartisan sort of abuse, if you will. You know, we can't even organize the Senate today without essentially a de facto filibuster.

I think one thing that's important to note is the traditional biases that the filibuster provides. Right? So, we know through research that the filibuster privilege is organized interests at the expense of latent interests. Right? And perhaps no example is better suited for this than the filibusters involving civil rights, you know, certainly in the post-war period, as well. But interesting scholarly research has shown that the filibuster also privileges economic elites at the expense of -- essentially giving them a veto point to stop legislation that is more equitable in terms of income inequality.

I think the real question here is, you know, I don't think anybody's disputing the fact that in the Senate the minority should have the ability to offer amendments, have the ability to engage in the debate, should have opportunities to influence the legislative process. I think, when I think about this, I think the real question is, does the minority get a veto? Because essentially that's the way it's sort of shaping up. Do 41 senators -- if you were to line up the 41 more conservative senators that make up that right pivot, they represent 39% of the population -- do those senators deserve to have a veto in the Senate and to stop legislation that's supported by, you know, in some cases over a majority?

I think that's a really interesting question and I think it's something that I grapple with as I sort of think about the filibuster. But I'm in total agreement that it's absolutely -- it's certainly in recent

history been plotted out. We're seeing an unprecedented level of the use of the filibuster.

MS. REYNOLDS: Rich, over to you.

MR. ARENBERG: Well, if you look at the House of Representatives, it's instructive. The House is a majoritarian body. The minority has no veto there. The majority does as it will. It builds a very powerful Rules Committee which controls just about everything about legislation that's important. And the minority has very little impact on what goes on in that body and what comes out of it. So, I think there's a real danger of reducing the Senate to a smaller version of the House of Representatives.

And you mentioned the organizing resolution. I just wanted to spend a minute on that because I think it reflects a lot. I mean, the existence of the filibuster is what makes it possible for the minority -- and putting aside what's going on right at the moment; I'll get to that -- but it's what makes it possible for the minority to insist on fairness in the Senate when it comes to its organization. So that if you look at Senate committees, historically they always reflect exactly the ratio of the body as a whole, so that the minority has the same percentage of members of the committees as they do in the full Senate.

That's enforced by the fact that the minority won't agree to an organizing resolution that isn't fair, that isn't agreed upon and fair. Again, if you compare that to the House of Representatives, for example, the Rules Committee is always a 2-1 plus one, so the majority, no matter what the ratio is in the House. And other major committees are like that, too.

By the way, I always wondered about that "plus one," whether it's kind of like the extra candle on a birthday cake for good luck or what it is.

And, of course, if you eliminate the filibuster entirely in the Senate, you're going to have -- the majority's going to take over. They're going to do what majorities do: they're going to take control. And you will have -- it may not be the Senate Rules Committee, it might be whatever organ they decide to set up. But the majority is going to decide everything that's important about legislation, including whether there'll be any debate on the floor or whether there'll be any amendments on the floor, as we see in the House of Representatives.

We almost never have open rules anymore in the House. The majority rules the House

basically with an iron fist. And I think, you know, that's the central danger that I see in going too far in eliminating the filibuster.

MS. REYNOLDS: Thank you. So, we're going to turn now to some questions that I have for both of our debaters. And, Rich, my first question is for you first and then, Carlos, if you want to add anything, you are welcome to do so.

So, despite some apocryphal claims to the contrary, the filibuster is not provided for in the U.S. Constitution and there is a degree to which it is a little bit of an accident of history. And so given this, given that it was not part of the founders' original vision for the Senate, how do you, Rich, sort of respond to that in the context of thinking about keeping it?

MR. ARENBERG: Yeah. Well, I mean, first off, it's very consistent with the view that the Founders had of the Senate. And, of course, the Senate has been reshaped in many ways, including direct election, which is probably the most principally important change.

Now, you know, it amuses me, opponents of the filibuster -- I won't accuse you, Molly, of being that -- but opponents of the filibuster love to declare that it's not in the Constitution. You know, I don't ever recall that claim. I've never seen a senator claim that on the floor or I've never really kind of come across that assertion that it's in the Constitution. It's enabled by the Constitution, however, in Article I, Section 5, which gives the Senate the right to write its own rules of procedure. It's on rules of debate. And, of course, how legislation is debated and comes to its final point of passage is -- that's kind of the central rule of procedure.

And so I would argue that the Constitution, that Article I, Section 5, clearly encompasses that. And so I tend to dismiss the argument that it's unconstitutional.

Now, we can argue much more fruitfully about how democratic or undemocratic it might be. And I often think that people who -- many people who are arguing the unfairness of the filibuster rule, their real underlying problem is with the great compromise. They just don't like the way the Senate is constructed. And that's the problem.

You know, Carlos kind of mentioned there's this sort of math game that we all play about

what percentage of the Senate -- of the population is represented by senators who can do this, that, or the other thing? And I would point out, for example, that if everything is focused on simple majority, a simple majority of the Senate can represent as small a percentage of the American public as 4%.

MS. REYNOLDS: Thanks. Carlos, do you have anything you want to add on that point?

MR. ALGARA: Yeah, just sort of briefly. I completely concur with Rich's point. Of course, there's nothing -- you know, the filibuster's not unconstitutional. You know, I don't think anybody argues that.

I would like to point out sort of what the Congress thought in terms of coalitions and, you know, not to be cliché, but ambition and made to counteract ambition. Right? A majority in the House looks different than a majority in the Senate, right, even if the same party controls. Right? Traditionally, even when the parties have not been polarized, you've had differing incentives between what the median member in the House wants and the what the median member in the Senate wants.

And, of course, these competing electoral incentives come from just the sheer fact that House members have a two-year horizon, senators have a six-year horizon. House members are accountable to constituents within their districts. Senators are accountable to a statewide constituency. So, I do believe that the founders took that into account when, you know, of course, they did, when they were designing their institutions.

I don't think that the founders thought that 41 senators should have a veto in the process as a way of sort of jacking up transaction costs. Because the way that it's currently constructed, even under a majority, that House majority median has to approve to change a policy status quo in their direction. And then you have to move to the Senate where you have to get a majority coalition, as well. And then, of course, you have to get to the presidency to get him or her to sign it.

So, transaction costs are sort of already baked into our institutional framework of this country. And I think the real question here is, do you want to increase transaction costs to the point where they almost become sort of -- where you give an increasingly small minority the ability to have a veto in the system? And I think that's sort of the question that's sort of before us here today.

MS. REYNOLDS: Thanks. Carlos, my next question is to you to start, which is one argument that folks offer in favor of keeping the filibuster is that from the perspective of any given majority party that holds the majority at a current point that that, given the level of competition in American politics, that majority is not going to stay the majority forever, and that a current majority needs to think about its future position in the minority when evaluating whether or not to abolish the filibuster.

How do you, first Carlos, and then, Rich, I'll let you come in, how do you respond to this, Carlos?

MR. ALGARA: I agree wholeheartedly. You know, I sort of think about Austin Rainey's (phonetic) classic work on party theory. Right? What's the ideal form of party theory? It's to see who comes up with the majority at multiple layers of government. Right? If a party is able to get a coalition big enough to win the House of Representatives, able to get a coalition big enough to win the Senate, and able to get a coalition big enough to win the presidency, by all means that party should have the ability to govern. You know, if that means that the Republicans are in the majority today, of course they should have the ability to govern.

And without a filibuster individual senators are not shirking responsibility. Right? Getting rid of the filibuster does not mean that any given party is going to be able to pass their national policy program. Quite the contrary. Senators still have an incentive to be responsive to their constituents. Right?

When Republicans had unified control in Donald Trump's first Congress, they didn't repeal the Affordable Care Act. And why was that? Well, it's because they couldn't have agreement about, you know, what that looked like.

And even today, I think if the Republicans would have unified control certainly after 2024, I'd be skeptical of their ability to really enact long-term change because that requires relatively unified parties. Certainly Democrats today, if they were to get rid of the filibuster, there's no way that their ambitious policy program nationally is going to be able to get a majority.

So, creating the -- if you were to get rid of the filibuster, you know, you're just sort of

enhancing I think an ideal that is good for democratic theory. And that's just the simple notion that parties, if they're able to win control of government, unified government, they should be able to govern and voters should be able to render an assessment.

In two years they're able to render an assessment in the House of Representatives. You know, of course, not every Senate seat's up every two years, but they're able to influence the ideological makeup of the Senate and every four years they're able to entrust a party with the keys to the White House.

So, you know, I think for democratic theory to work parties have to be able to enact -- they should be able to have the opportunity to enact their policy programs. And I think the filibuster inherently makes that a little bit harder.

MS. REYNOLDS: Rich?

MR. ARENBERG: With your leave, I'll do what senators often do and pivot back to a previous question. I wanted to make a quick observation because, you know, the founders often get dragged into this argument and it's a little like quoting the Bible. You know, you can pretty much find something to support your point of view.

I've always like the letter that Jefferson wrote to Madison in 1787, in which he argued that legislation, when passed by the Congress, ought to sit in abeyance for a year before it took effect. And that if something was sufficiently important enough to require a speedier process, that it should take a two-thirds vote. And the reason I like that is not so much because it puts legislation in abeyance for a year, I'm not sure that's wise, but it does reflect that many of the founders were very ambivalent about this question of simple majorities versus supermajorities.

And I wanted to go back to your most recent question and now I've forgotten what it was.

MS. REYNOLDS: We were talking about the notion that the majority now will not stay the majority forever.

MR. ARENBERG: Right, sure. Yeah, I think there's a real opportunity there. You know, I've emphasized that I think change of the rules in the Senate, and there's a need for change, ought to be

bipartisan. We ought to try to follow the rules and change the rules in that fashion, which may require overcoming a filibuster with a two-thirds vote. Nonetheless, I think right now the 50-50 Senate gives us a golden opportunity in that regard.

Now, I'm not endorsing the Republican strategy of holding up the organizing resolution over the filibuster argument, but I think maybe one way to solve it is to -- for the leaders to appoint a select committee or a blue-ribbon panel or whatever they want to call it to try to come to a package of rule reforms for the Senate.

And I think it's -- the reason I think it's such a good opportunity is because nobody at all can tell you who's going to be in the majority in the next Congress. It often is up in the air, but for sure it's up in the air this time around.

And so I think you can have that kind of panel where both sides don't know who's speaking for the majority and who's speaking for the minority. And I think that's a way to get at a more equitable arrangement and to really -- where the driving principle might be what's best for the Senate, what's best for the country, what's best for breaking the gridlock and moving forward in a much more productive way.

I always when I make the proposal, I compare it to what the trick every parent knows, that if you've got two kids and they're going to split a cookie, you say, okay, kid number one, you divide the cookie. Kid number two, you get to pick which side. And what you wind up with is the most exquisitely divided equal two cookie halves that you could possibly have.

MS. REYNOLDS: Thanks, Rich. For those of you in the audience who have historically attended Brookings events in person, this cookie discussion making me miss our events spread.

But my next question, I'll go first to Carlos and then back to Rich, and this is something that you have both touched on previously, but that currently the debate over abolishing the filibuster is intimately tied up with questions about racial politics and racial justice in the United States. So, Carlos, as you pointed out earlier, that the numerical minority in the Senate is disproportionately white. We also know looking back at earlier periods, particularly in the middle of the 20th century, the degree to which the

filibuster was used to obstruct civil rights legislation.

So, can I just ask each of you to respond to kind of this dimension of the current debate over abolition. Go ahead, Carlos.

MR. ALGARA: I think that's a great question. And I think it's sort of tied up with this sort of broader discussion that we're having, and that's access to democracy. Of course, there's a rich, frank literature that has shown that the color of your skin is pretty predictive on how long you're going to vote -- how long it takes you to vote or your access to ballot box today. So, I think it's something. I think it's a great question.

I think there's one key point here and I think we're sort of touching on it subtly, but I want to make it a little bit more explicit. Compromise works if both sides have an incentive to change the status quo. Right? Today I think it's pretty clear that given the level of partisan polarization that we find in Congress, Democrats want to move the status quo today where Republicans would be much more comfortable moving the status quo. And I think that's okay.

I think in democracy, you know, it's perfectly reasonable for one party not subscribing to the notion that they want to move the status quo in the direction of the majority party because they're closer to the status quo in terms of vis-à-vis their preferences than they are to anything that the majority party would take the lead on. So, you know, I think that's one of the defining measures of a democracy.

I do think, in terms of the original question, Democrats want to move provisions to enhance -- you know, take H.R. 1, for example, you know, provision to provide for a more equitable democracy just in terms of electoral incentives. I don't think that the minority party in the House or the Senate want to go in that direction at all. I think they're more comfortable with the legislative status quo as it is today. And they don't want to touch anything that moves the status quo more in the direction of the majority liberal position.

So, I do think that historically, and I think it's pretty clear on this point, that the filibuster has been used as to give a veto to Southern white senators over civil rights legislation. You know, and I think that was bad for democracy then and I think giving 41 senators the ability to block legislation that

provides for more equitable democracy, I also think that's bad.

So, you know, it's not sort of lost on my because, by definition, if you keep the filibuster in place, you're raising the transaction cost and you're having negotiations with perhaps one side of the aisle that has absolutely no ideological incentive to move policy closer towards the majority party. So, I think that's sort of an important point.

MS. REYNOLDS: Rich?

MR. ARENBERG: Well, let me say first, because it often gets brought up, that the use of the filibuster in the way that it was used in the civil rights era of the '50s, I consider immoral, I consider evil. I think when -- you know, we get tied in knots around procedural changes. And, of course, those of us who are rules nerds, we love to get into the weeds like that. But it's not the rule. It's not -- the fact that it was used for evil purposes doesn't make the filibuster evil. It's not inherently wrong.

As I say, we can argue about what's more democratic. I mean, right now we have a President who is calling for reunification of the country, who's trying to, at least to some degree, reach out to the opposition party and try to impact this polarized politics that is such a big part of the threat to democracy that we see in our current state. And I would suggest that eliminating the filibuster, particularly by using a kind of steamroller, simple majority, we're going to change the rules because we can approach to it, that that's not going to reduce polarization. In fact, it's going to exacerbate it and make it more difficult.

And I think that compromise, I mean, Carlos started his answer with his view on compromise, I would argue that compromise is central to democracy; that in the situation that we too often have now where you can't get both parties to the table, that that's a fundamental existential threat to democracy; that, you know, we've limped along that way for a decade or two or three, but it's not sustainable in my judgment. You know, as we go forward, the damage to our democracy gets greater and greater.

And one last thought about, you know, minorities having a veto and forth and so on. You know, Nelson Mandela said, "Where you stand depends on where you sit." And I think it's instructive for

Democrats to just think back about -- think about the first two years of the Trump administration. Trump very badly wanted to eliminate the filibuster. And it was "Darth Vader," Mitch McConnell himself, who stood up to Trump and said, you know, the support just isn't there in the Republican caucus and we aren't going to do it.

But just for the sake of understanding what's at stake, think about two years of Trumpism. If you're a Democrat -- it might bring a big smile to your face if you're a Republican, but if you're a Democrat, think about those first two years of Trump in the White House and what might have been if both the House and the Senate could be controlled with a simple majority.

MS. REYNOLDS: Thank you. The last question I want to pose to you both before we turn to some questions from the audience is I'd like -- you both mentioned at various points various proposals to reform the filibuster short of full abolition. So, Rich, maybe we'll come to you first to talk about whether there are particular proposals, whether it's a return to the so-called talking filibuster, or another proposal that you would be in favor of.

MR. ARENBERG: Yeah.

MS. REYNOLDS: And then, Carlos, I'll ask you the same question.

MR. ALGARA: Yeah, sure.

MR. ARENBERG: Well, first off, I have, for a very long time, I have supported making the Motion to Proceed non-debatable or limited debate on it, so that -- and I think that has value as a reform because it would enable the majority leader as part of -- we always say the majority leader, you know, the leader really only has two powers in the Senate: setting the agenda and the right of first recognition. And neither of those are even in the rules.

But the setting of the agenda would have more teeth to it if the majority could move matters to the floor without having to overcome that initial filibuster. And it's my view that there's no value added to that filibuster, no significant value added. And so that it would improve the amount of time that the Senate had to work on legislation to eliminate that filibuster.

Likewise, I would make the motion to go to conference non-debatable. I mean, you

know, for a very long time there were three motions that you needed to go to conference and all three were subject to filibuster. And the Senate reformed that and combined those three into one debatable motion. But I would still make it non-debatable with the understanding, of course, that when a conference report came back to the floor it's subject to filibuster. So, the minority is not giving up its ultimate ace.

But the other thing about being able to get matters to the floor and open for debate is it opens up more directly the opportunity for the majority to put a very intense spotlight on the filibustering minority. So that it makes it a much more doable situation to try to mobilize the voters around the country in trying to -- for things that have abroad support, to push them over a filibustering minority. We've seen that with all sorts of major legislation that's been sustainable because it ultimately had bipartisan support, historically.

And I would include the '64 Civil Rights Act in that, as well. I'm the proud owner of one of the pens that Lyndon Johnson used to sign that act and I think it's one of the great pieces of legislation in the Senate's history.

MS. REYNOLDS: Thanks. Carlos, thoughts on reform proposals?

MR. ALGARA: Yeah. I think that's a great question, you know. And I think Rich laid out a lot of interesting ideas.

You know, I think fundamentally when I view this question it's pretty much in the prism of how much does a minority party -- how opportunities does a minority party have to veto? And I don't think that the minority party should have the ability to veto the majority.

I've heard a lot of interesting proposals. You know, I've heard about not allowing the Motion to Proceed, not to be filibustered, perhaps having a super bill, you know, that's not allowed to be filibustered. And I do think that the minority party should have the ability to debate. I don't think this should be the House of Representatives. I don't think you should have a strong Rules Committee.

My former boss laments this all the time, you know. Majority party senators and minority party senators don't have the ability to introduce amendments -- I'm sorry, don't have the ability to get votes on their introduced amendments. So, I do think that's a real problem. I do think the minority party

should have the ability to have votes, you know, even if they're just pure messaging votes. I think senators are responsible enough that they should be able to vote and show their constituents where the rubber meets the road, so to speak.

I think fundamentally, in terms of reform, I think we can talk about sort of reforms without talking filibuster and what does that look like? But ultimately, I think any reform proposal must have the ability of the majority to stop debate. And for that stopping of the debate it should not require 60 votes. It should require a majority.

So, I think that's sort of where I am in terms -- but, of course, you know, I think the centralization of power, as anybody who thinks about the Senate a lot, is to the detriment of the institution. I do think that individual senators should have the ability to offer amendments and should be able to influence the legislative process.

What I don't think should happen is I don't think 41 senators should be able to stop legislation that gives D.C. the right to congressional representation. I think that's a little bit of a bridge too far for me.

MS. REYNOLDS: All right. Thank you, both. We're now going to turn to some questions from the audience.

The first question comes to us from John Lawrence, who asks -- or who writes, "The filibuster provides a significant advantage to the Senate in developing legislation over the House. Since its members can argue a bill or a provision approved by the majority, House cannot pass the supermajority required for cloture and, therefore, the Senate's version of legislation must prevail. Don't senators see this tactical advantage as a reason to preserve the filibuster even if its use also inflates the power of the minority in the Senate itself?"

Rich, do you want to take that first?

MR. ARENBERG: Oh, sure. Yeah, I think it does -- I think that's true, that it does give an advantage to the Senate in dealing with the House. I -- as a result of the existence of the filibuster, I mean, historically the Senate is often the cradle of compromise. It's a little hard to get those words out of

my mouth after the experience of the last couple of years, but, you know, I think that when we talk about reform, we should be trying to go in the right direction, not the wrong direction, as I would see it. And, you know, I think that legislative leverage has been very important and that the Senate, because of its rules and in all sorts of ways, becomes the cradle of compromise.

The most simple way is that the leaders have to talk to each other. I mean, we have -- I mean, McConnell and Schumer, who by all reports don't get along all that well as a personal matter, nonetheless they have to deal with each other every day on the Senate floor and through their senior staffs. And when I worked for George Mitchell, he met with Bob Dole, you know, multiple times virtually every day that the Senate was in session.

The House Rules Committee once held a hearing on the relationships in the House. And Speaker Gingrich and Democratic Leader Gephardt both testified that over the course of a four-year period they talked to each other about six times.

So, I mean, that's the situation in the House. The pathway to deal-making is not as readily available as it is in the Senate. And I think the filibuster plays a very important role at the center of that.

MS. REYNOLDS: Carlos, do you have a response to this question?

MR. ALGARA: Yeah. You know, I do think that you get moderation independent of the presence of the filibuster or not even under the same party. Right? What House Democrats ideally would want in their legislation is going to be fundamentally different than what the Senate Democrats would propose. And, of course, this is just due to the nature of the institutions: separate terms, separate constituencies. So, you do get compromise. Right? I don't think compromise is inherently bipartisan. I think compromise is inherently between the differing institutions.

And I think compromise can also happen within a party that has -- where the voters have given the ability to have unified control. I think if you get rid of the filibuster, you're not going to have compromised. I think of course you're going to have compromise. You have to get Joe Manchin on board, you know, with Alexandria Ocasio-Cortez. It's just within one party. So, you know, I do think that's

sort of one important point.

But just briefly, what I'll just add to that is, you know, the presence of a filibuster, of course, privileges the Senate, but it also privileges the filibuster pivots, which are increasingly, you know, out of step with what I think the country looks like. So, you know, I think that's undeniable.

MS. REYNOLDS: Thank you. Carlos, since you raised Joe Manchin in your response to that question, I want to -- the next question I want to ask, which comes from Cory Manento, also invokes Joe Manchin. And Cory asks, "Is there a political downside on the vote to eliminate the filibuster itself?" In other words, do you think voters care or know enough about the filibuster rule to make the vote itself potentially difficult for senators, like Joe Manchin?

MR. ALGARA: I think that's a great question. You know, and some of my own work sort of touches on this.

I'll just preface this by saying I published a piece saying that senators are accountable for their procedural votes. I will say this, though. There's undeniable evidence that suggest that average Americans are not thinking about Senate procedure. And that is inherently conditional, just like politicians, on what side you're on. Right? Mitch McConnell cares about minority rights today. I don't know where he was during impeachment. I don't know where he was during Amy Coney Barrett. He's just had this sort of, you know, come to religion sort of moment.

So, you know, I don't -- it's hard for me to disentangle the specific case about Joe Manchin. Just by sheer partisan polarization Joe Manchin is most likely in his final term. You know, voters aren't casting increasingly state tickets. So, I think his electoral fate is probably pretty much already baked in independent of this vote.

But I don't think senators pay an individual consequence of their votes on procedure. You know, I just think that this is a little bit too abstract for voters to understand. I think that voters think about policy, but they don't certainly -- I don't think voters necessarily care whether you get a certain policy in a Senate with a filibuster and a Senate without. I think they just ultimately render judgment on the parties and their candidates on the basis of policy positions and what the majority's able to deliver.

MS. REYNOLDS: Rich, do you have anything to add?

MR. ARENBERG: Well, yeah, I mean, I basically agree with much of what Carlos said there. You know, I do think that these procedural questions are -- you know, I describe them as being in the weeds, and that's sort of how it is. Sometimes it's hard, I can tell you as a long-time Senate staffer, sometimes it's hard to even get senators interested in the issue.

And there was for a very long time in the Senate's history a kind of sensitivity to things that were just procedural. There were many senators, for example, who are very proud of the fact that they had never voted against cloture on a judicial nomination.

And the same was often true for the Motion to Proceed. You know, we didn't see these double filibusters until really much more recent history in the Senate.

So, I mean, I do think that it's hard to get the attention of voters to focus on these sort of procedural questions, but, you know, I'll end with a quote that I have liked very much from the former congressman from Michigan, John Dingle, who said, "You let me write the rules, I'll let you write the substance, and I'll screw you every time."

MS. REYNOLDS: I believe in at least one version of that quote there's a less family-friendly version in the second part of that. (Laughter)

But I have a question here from Don Wolfensberger that I'm going to pose first to Rich and then to Carlos, as well, because I think you probably both have interesting perspectives on this, which is, is there a different view by Senate leaders versus their rank-and-file members of the filibuster?

Rich, you want to go first?

MR. ARENBERG: Absolutely. Absolutely. And, you know, what I would use to illustrate that is the whole debate about Senate holds. You know, here many, many times you've seen majority leaders of both parties go to the floor and just complain on and on about how they're being tied up in knots and they're hamstrung by the proliferation of holds and what a big problem it is. And I don't belittle that because it is difficult when they proliferate and everything. But there's -- you know, you can take the Senate rulebook home and read it in the bathtub tonight and you won't find anything that enables Senate

holds.

What enables Senate holds are the fact that the leadership will abide by them, will tolerate them. And so if Majority Leader Schumer went to the Senate floor tomorrow afternoon and said, by the way, I'm not going to honor any more holds, so, you know, that's all over with, that would be the end of it.

MS. REYNOLDS: Carlos?

MR. ALGARA: Yeah, I think that's a really interesting question. You know, and I'll just preface this by saying just briefly, I think it's a little bit asymmetrical between the two parties. And the reason why is, you know, I think the Republicans are unified in two issue areas that they've already gotten rid of the 60-vote threshold. One is taxes and the other one is judicial nominations or executive nominations. So, they were able to do that. I don't think the Republicans are unified enough in terms of, you know, substantive policy legislation or they haven't attempted to get rid of the filibuster.

I will say this, though. If I was an individual senator, I would like to filibuster. I would like to, you know, delay taking tough votes on things. You know, I want to stay in office. I want that really nice office suite in Hart, so, you know, I just don't want to take tough votes and I think Joe Manchin doesn't want to take tough votes. I don't think Joe Manchin wants to vote on D.C. statehood, per se. I don't think Jon Tester wants to either. I don't think they want to vote on climate change legislation.

So, you know, I think from the individual perspective of a politician, they hate uncertainty. And I think the filibuster provides certainty and that certainty is that I don't have to take votes that are dividing the two parties, And I don't have to vote on relatively contentious proposals. And, of course, I think that -- I think scholars are corrected when they say that really privilege is organized interest over larger, more latent interests, as well.

MS. REYNOLDS: All right. We have time for one last question, which comes in from Frederick Boring, who asks, "What cultural and societal changes which you say account for the fact that the filibuster has been used much more frequently in the last 20 years than it was used in the 20th century?"

Rich, do you want to take that briefly first? And then Carlos.

MR. ARENBERG: Yeah. Well, that's a really big question. And I teach a course, in fact, this semester called "Polarized Politics." And the answer to that has roots that go in a lot of different directions, including campaign finance, the way that money is raised, including how the mass media has changed in this country and so that we now see much of the media divide itself into two bubbles.

And these sorts of factors reflect themselves in our body politic more broadly, but more narrowly in the House and the Senate. And I think -- so that, you know, we've seen the Senate come to reflect this more and more.

Carlos made reference earlier to the two areas in which Republicans managed to get rid of the filibuster. Well, actually it was Democrats who got rid of the filibuster in both of those areas. And many of them lived to regret it. The inclusion of reconciliation in the Budget Act, for example, which was written by Robert Byrd, came to be probably his greatest regret.

I mean, former Parliamentarian Bob Dove, who was the co-author of "Defending the Filibuster" with me, was actually the staffer who wrote the reconciliation language. And he told me on many occasions that that was the biggest regret of his career.

And, of course, the elimination of the filibuster on judicial nominations is largely something that the Democratic majority did.

MS. REYNOLDS: Great. Carlos, do you have one last parting thought on this question for us?

MR. ALGARA: If there's another question, we can take that.

MS. REYNOLDS: All right. That was our last question, so we will -- and we've reached the 3:00 hour. So, I want to thank Carlos. I want to thank Rich for a really great discussion. I want to thank all of you for watching. And I encourage you to attend future Brookings events and keep an eye out for more coverage of this particular important issue.

So, thank you, Rich. Thank you, Carlos. Thank you all.

MR. ARENBERG: Thank you.

MS. REYNOLDS: Have a great day.

MR. ALGARA: Thanks, everybody. Thanks, Rich.

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