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THE CURRENT: Will Biden's call for Senate filibuster reform carve out a path for voting rights?

Thursday, January 13, 2022

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(MUSIC)

PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita.

On Tuesday, President Biden and Vice President Harris traveled to Atlanta rally public support for voting rights protections and to charge Democratic senators, unequivocally, with modifying the Senate filibuster procedure to allow crucial voting rights bills to pass with a simple majority.

Here to weigh in on the president's remarks and the context of this moment for voting rights is Rashawn Ray, a senior fellow in Governance Studies here at Brookings and professor of sociology and executive director of the Lab for Applied Social Science Research at the University of Maryland, College Park. Rashawn, thanks for talking to us again.

RAY: Hey, thank you so much for having me on, as always.

PITA: So the president's speech was marked by some really strong rhetoric; he who was a senator for 36 years and long a defender of the institution declared the Senate a "shell of its former self," and he cited this moment as a deciding point between democracy and autocracy.

Now, whether that sways the last of the Democratic senator holdouts remains to be seen, but start us off by telling us what you thought of the speech. Did he say what you think most needed to be said?

RAY: I do think he said what needed to be said. I mean, he was quite forceful, I think it was a very good speech. From President Biden I think we've heard a series of very passionate speeches lately that have been really, really good and could go down in history potentially either way, as something that either led to massive change or something that did not. In particular, President Biden highlighted a choice between Dr. King or George Wallace. Whoo, that was a very powerful comparison! And we heard from Republicans, Mitch McConnell in particular, say that he potentially went too far. I don't think he did; I do think that is the moment that we are in right now in terms of choosing between two very different approaches for our democracy moving forward.

PITA: One of the big questions out there was about the timing of this speech. Some voting rights activists did boycott, basically saying that it's too late for speeches, that he should really be focusing on just getting the work done. The president is meeting, of course, with Senate Democrats today, Thursday afternoon, to come up with a plan for modifying the filibuster, but what's your take on that "too little, too late aspect"?

RAY: Well I'm not sure if I think it's ever too little or too late, but I think what they're highlighting – and I even think about this in terms of writing about this issue, nearly a year ago now I wrote about the case for civil rights exception to the filibuster. I actually cannot believe that it's been almost a year ago, but I think that speaks to what some activists and political pundits are saying, is that we've had a year and there hasn't been massive movement.

The other part of this is that President Biden, Vice President Harris, members of the Senate and the House of Representatives that are Democrats have made a series of promises to their voters, who came out in ways that we have never seen before in the 2020 election, and those promises have not

been made whole. They have been broken up to this point, and people are highly frustrated. The “too little, too late,” is people saying well, maybe the ship cannot be moved to the place where it needs to be, but I still think ahead of this upcoming election with the midterms that what could happen with voting rights could lead to some huge changes in terms of how people think about democracy and equality in America.

PITA: So the two bills in question are the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act. Senator Schumer has said that he plans to call a vote by Monday, Martin Luther King Jr. Day. Maybe you could remind our listeners what's in these two bills. What is it that they each individually do?

RAY: So in the John Lewis Voting Rights Act, it essentially restores and strengthens the Voting Rights Act of 1965. And people really don't understand as to why that happened. We think 1965, this legislation is in place. Well, beyond the fact that the Voting Rights Act has to be periodically renewed, there was a big court case, *Shelby County v. Holder*, that essentially dismantled a lot of the Voting Rights Act in terms of providing federal oversight for localities engaging in redistricting and gerrymandering. And we've seen what's happened there, from North Carolina to Texas to Georgia, even, in terms of having massive forms of shutdowns when it relates to voting, in terms of where people can go to vote. We see that in the lines that people stand in to be able to vote. And so part of thinking about that is that this is a big way in a way that we think about equality and moving ahead in terms of thinking about people having an equitable way to get to the polls, how long they wait, their access to engage in certain types of voting, whether that be mail-in ballots and what have you.

And when it comes to the other legislation in terms of how we think about the Freedom to Vote Act, the best way to think about is this ensures that everyone has the right to vote equitably. And what that means is, in terms of giving people what they need, that federal oversight is so important. For example, we know in Texas that not only were many polling places closed, but in several counties, large counties, they would have only one drop-off mail ballot place. And instead, we should be living in a society, as large as the United States is growing in terms of population, to ensure that access to be able to vote should be available any and everywhere people want to engage that and not simply roll back.

And part of this is a finding that has been pretty consistent in the academic literature, and that is when voter turnout is higher, Democrats tend to win. When voter turnout is lower, Republicans tend to win. So when we think about it, restricting people's access to the polls turns political in a way that really goes against our Constitution, and I think these legislations are good way to do it. And obviously Democrats are trying to figure out the best way to get that done and it's really seeming like making some sort of exception to the filibuster, to bust it if you will, could be a pathway forward. It might be the only way forward, but they're going to have to get some of their party on the same page.

PITA: Yeah, according to the Brennan Center for Justice, there's been in 49 states – so pretty much every state in the Union – there have been over 400 bills that have been introduced with some kinds of provisions that restrict voting access in some capacity. More than 30 of them have so far been signed into law. And as we mentioned previously Biden and others have pointed to this really as a deciding moment for the future of America's democracy.

If the president, Senator Schumer, and the rest of the Democratic caucus aren't able to convince Senators Manchin, Sinema, and a few of the other holdouts to prioritize passing these protections, is this is this the end of the fight? Are there any other mechanisms at the national level for helping to protect voting rights? You talked about how important that federal oversight is; is this the last chance, or is there something else that can be done if Congress can't pass legislation?

RAY: I think it's going to be tough. Again, it gets back to these promises, and you started this by asking me what I thought about what President Biden said in his speech; I think it goes back to what James Baldwin has taught us: I can't necessarily believe what you say because I see what you do. And we hear the rhetoric, and part of what activists are saying, what people in certain marginalized

communities are feeling and saying is, that we hear you. We hear what you're saying, we hear the promises, we hear the rhetoric; it sounds strong, but we are not seeing any changes in our backyard.

And I think that is the thing, that part of what Democrats keep doing, for example, Senator Schumer just did this, he said by Monday we're going to get this done. Well, you know what, we're only a few days away from Monday, and if that comes and goes and something hasn't happened, that is another broken promise. And you're doing that on MLK Day, a big day where people are paying attention. People are off work, of course, it's supposed to be a day on not a day off, people are supposed to engage in service. We've heard from Dr. King's family, Dr. Bernice King and Martin Luther King Jr the third, that this is a day to engage in activism around voting rights, to try to pass the John Lewis Voting Rights Act.

The filibuster, it seems like something is going to have to happen there. We have to remember there been a lot of exceptions made to the filibuster over the years, whether it be for Supreme Court nominees, whether that be for different sort of selections that's happened for the judicial branch. And so thinking about that, at this point if this doesn't happen, I think, it's going to be an unfortunate downward spiral for Democrats, not just for the midterm elections, when we know voter turnout is lower, but also in states and at the local level. Because as much as people pay attention to what's happening at the federal level, we know that there are that there are some senate races, including in Georgia, but there are also governor races, there are local state Senate, state delegates, state representative races that matter a whole lot. And it's important for people to be engaged not only on the federal level, but also on a local level. The Democrats are coming out and understandably so, trying to apply pressure publicly. But it seems like that that pressure up to this point has not been effective and instead that pressure is going to simply dwindle some of the support of their base moving forward.

PITA: Where do you see the future of the fight if the best comes to pass, and these voting rights protections are passed, does that solve most of the problems or is or is there, another frontier out there that needs to happen to secure equitable voting rights for the population?

RAY: That's a really good question, I mean, I think that that these legislations will matter a lot, but I think the process by which they happen potentially might be just as important. Because if Democrats engage in a filibuster [change], that opens the door for a series of other things, things that Manchin and Sinema seem to be open to. Accordingly, for the base of Democrats, because part of making this legislation is thinking about these battleground states of Georgia, and Texas, and North Carolina, Florida and Arizona that have become huge battleground states, beyond the normal ones of Ohio and Pennsylvania, in the mid-Atlantic and the Midwest, accordingly I's going to take something additional to regain the momentum that people had in 2020.

See in 2020, not only was it about Biden and Harris winning, but for a lot of people it was about Trump losing. For others, of course, it was about Trump winning. But for a lot, it was about opposing Trump in their vote. Now Democrats have to figure out what is next if that is not the reason why people are coming out to the polls. Well, people will come out if those promises have been met. The John Lewis Voting Rights Act happening on MLK Day or next week will be huge, but then you know what people expect? People expect policing. The George Floyd Justice and Policing Act failed at the federal level. The Senate never brought it up. People are saying, look, we gave Democrats the presidency, we gave them the House, we have the tiebreaker in the Senate, what are you all doing? And accordingly, Republicans know that if they simply stall out and they stall the Democrats' agenda that the Democrats will be blamed and rightfully so. That will lead to lower voter turnout and that will lead to them – Republicans – continuing to be able to build their farm team at the local and state level, to then reclaim what's happening in Congress, which could come this fall in the midterm elections if Democrats don't get some things done.

PITA: Alright. Well Rashawn, thanks so much for talking to us today and we're going to stay tuned to Monday and see what happens.

RAY: Thank you so much for having me.