



Oregon's Senator Jeff Merkley

Dear Robert,

You have previously shared with me your concerns about the use of the filibuster and the general dysfunction of the Senate making it nearly impossible to pass good legislation. I continue to push for reforms to Senate rules that would improve the function of the Senate and be more responsive to the will of the American people. I write to share with you my recent [opinion column](#), published in the Washington Post on the topic.

I hope you continue to send your thoughts and ideas my way.

All my best,

Jeffrey A. Merkley
United States Senator

The Washington Post

Why 'supermajority' no longer works in the Senate **By Jeff Merkley, Published: November 4**

My colleague Sen. Ron Johnson recently argued on these pages that a supermajority voting requirement in the Senate is part of our Founding Fathers' constitutional design and that recent efforts to change it are driving the "bankrupting of America" ["A simple majority is not enough," op-ed, Oct. 23].

I take a different view.

At no time did our Founders envision that the Senate would require a supermajority to pass legislation. Indeed, the Constitution requires a supermajority only for very limited purposes, including the ratification of treaties and the override of a presidential veto.

Nor did the early Senate adopt any supermajority requirements by rule. Senators extended the courtesy of extensive debate as a basic principle of deliberation, but they passed all legislation by simple majorities.

While some were tempted to talk a bill to death by not agreeing to a final vote, this temptation was moderated by working relations — historically, the Senate had many

fewer members than it does today — a deep commitment to the principle of majority rule, and the prospect that if individuals were to abuse the process, the Senate could respond by adopting a rule change with a simple majority.

Many Founders saw the possibility of a supermajority requirement for passing bills as destructive, inappropriately subjugating the wisdom of the many to the wisdom of the few. Alexander Hamilton observed in the Federalist papers that a supermajority requirement has a “tendency to embarrass the operations of government” and would generate “tedious delays; continual negotiation and intrigue; contemptible compromises of the public good.” This characterization matches how many Americans perceive the Senate today.

The duality of extended debate and majority decision-making was seriously tested throughout the 1800s, but it wasn’t until 1917 that the Senate adopted a rule for formally ending debate.

To counter the possibility that a few would seek to win through obstruction what they could not win through persuasion, the Senate agreed that debate could be ended by a supermajority vote. This process, known as “invoking cloture,” initially required a two-thirds majority. That was later changed to three-fifths. Moreover, rule changes were now subjected to a supermajority threshold, eliminating a significant deterrent to abuse of the process.

This new cloture rule was rarely exercised. Between 1917 and 1960, a cloture motion was filed only 30 times.

Over the past 50 years, however, the Senate’s deliberative social contract has unraveled. After Southern Democrats seized on supermajority obstruction to block voting rights legislation, senators started employing the tactic broadly. The number of cloture votes grew from 26 in the 1960s to 136 in the 1980s to 367 in the past decade. The constitutional and historical norm of decision-making by simple majority has been replaced by a routine requirement to assemble a supermajority of 60.

As predicted by Hamilton, this super-majority barrier has fueled the politics of paralysis. Getting anything done in the Senate is like wading through knee-deep molasses. The difference between today and the Senate of the 1970s, when I was an intern for Sen. Mark Hatfield, is stark. A Senate that routinely debated amendments from both sides and decided almost all issues by simple majority is gone.

Now, united minority caucuses, backed by powerful interest groups, seek to use the supermajority requirement to block action and discredit the majority.

The resulting paralysis and partisanship hurt our nation. They are probably the largest element behind the low opinion of the Senate. Our citizens expect more. The Senate must be able to respond to the major challenges of our time, including creating jobs and

reducing the debt.

That is why Sens. Tom Udall, Tom Harkin and I, among others, fought to change the Senate rules in January. One key change would have created a protocol for amendments so that both minority and majority amendments could be debated.

Another key provision was to replace the “silent filibuster,” in which a single senator can block a simple-majority vote on an amendment or bill, with the “talking filibuster” — requiring those who wish to block final action to make their case on the floor, before their colleagues and the American people.

This would force those senators holding up a bill to defend their obstruction and let the public decide whether they are heroes or bums. And by requiring senators to invest time and energy, it would strip away a large number of the frivolous filibusters.

The beauty of this approach, the kind of filibuster Jimmy Stewart’s character used in “Mr. Smith Goes to Washington,” is that this is the way the American people already think the filibuster works. Let’s make it so!

These reforms would help members of the minority and majority offer amendments and improve the Senate as a problem-solving venue. It would also be a huge stride toward the fair deliberation and majority decision-making envisioned by our Constitution and our Founders.

The writer is a Democratic senator from Oregon.