



To: Interested Parties

Fr: Adam Jentleson, Battle Born Collective

Re: A brief history of the filibuster

Dt: March 8, 2021

This memo outlines the evolution of the filibuster from the “talking filibuster” into the supermajority threshold we know today. Nonexistent in the Framers’ vision, the talking filibuster first emerged in the middle of the 19th century, after all the Framers had passed away. Its chief innovator and practitioner was John C. Calhoun, who sought to increase the power of the minority in the Senate on behalf of the slaveowners he represented. When James Madison had designed the Senate, he had intended the minority to be guaranteed a voice in the process, but he made clear that all decision points were to remain majority-rule (except those enumerated in the Constitution for supermajority thresholds, like removal from office and Constitutional amendments). As Calhoun explicitly stated, his own goal was to expand the minority’s power beyond what Madison had intended, into an outright veto over the majority.

The supermajority threshold that enabled this minority veto did not emerge until the Jim Crow era, as southern senators sought to defeat civil rights bills. As early as the 1890s, civil rights bills secured majority support in the House and Senate, the support of presidents of both parties, and would have passed into law decades before America finally acted on civil rights. Southerners began using a rule introduced in 1917 to apply a supermajority threshold exclusively to civil rights bills. During the Jim Crow era, all other non-civil rights legislation continued to pass or fail on a majority-vote basis (with the exception of treaties and Constitutional amendments).

For most of the Senate’s existence, including during the passage of major accomplishments like Medicare, bills passed or failed based on whether they could secure a majority. Today, by replacing the talking filibuster with a de facto supermajority threshold, the Senate has moved away from Madison’s vision of a Senate where the minority was guaranteed a voice in the process, and acquiesced in Calhoun’s vision of a chamber where the minority wields a veto.

I. The Framers designed the Senate to be a majority rule institution

The Framers believed majority rule was “the republican principle.”

The Framers saw majority rule as the defining feature of the nation they created. James Madison called majority rule “the republican principle.”¹ James Wilson, the leading legal theorist among the Framers and one of the original Supreme Court justices, said that “the majority of the people

¹ Hamilton, Alexander; Madison, James; and Jay, John. *The Federalist Papers*. Mineola, NY: Dover Publications, 2014. 44.

wherever found ought in all questions to govern the minority.”² Benjamin Franklin wrote that a system where “the minority overpowers the majority” would be “contrary to the Common Practice of Assemblies in all Countries and Ages.”³ Thomas Jefferson believed that majority rule was “founded in common law as well as common right,” and “is the natural law of every assembly of men.” Jefferson said, “It is my principle that the will of the majority should always prevail.”⁴ The Framers’ views reflected those of John Locke, who wrote in his *Second Treatise on Government*, “The act of the majority passes for the act of the whole, and of course determines, as having by the law of nature and reason the power of the whole.”⁵

Majority rule created the Senate and saved the Constitutional Convention.

The Great Compromise created the Senate and resolved an impasse that threatened to sink the Constitutional Convention. The compromise passed by a single vote, 5 to 4.⁶ If the Constitutional Convention had required a supermajority, it would have failed.

The Framers were familiar with the idea that supermajority thresholds promote cooperation - and they rejected it.

The Framers explained that while in theory, supermajorities seemed like they would promote cooperation, in reality, they gave the minority an irresistible temptation to manufacture gridlock. Hamilton wrote in *Federalist 22* that requiring a supermajority “is one of those refinements which, in practice, has an effect the reverse of what is expected from it in theory.” The idea that supermajorities promoted cooperation was “founded upon a supposition that it would contribute to security,” he wrote. Instead, he explained, “its real operation is to embarrass the administration, to destroy the energy of the government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto, to the regular deliberations and decisions of a respectable majority.” Hamilton further explained, “what at first sight may seem a remedy, is, in reality, a poison.” It would be wrong “to subject the sense of the greater number to that of the lesser,” because if “a pertinacious minority can control the opinion of a majority,” the result would be “tedious delays; continual negotiation and intrigue; contemptible compromises of the public good,” Hamilton wrote.

The Framers had seen supermajority thresholds cripple the federal government under the Articles of Confederation.

² Konkle, Burton Alva. James Wilson and the Constitution. Lecture delivered before the Law Academy of Philadelphia. November 14, 1906. 26.

³ Franklin, Benjamin; and Franklin, William Temple. The Works of Dr. Benjamin Franklin: Autobiography. Vol. 2. Philadelphia: W. Duane, 1808. 473.

⁴ Jefferson, Thomas. *Thomas Jefferson: Diplomatic Correspondence, Paris, 1784–1789*. Brett F. Woods, ed. New York: Algora Publishing, 2016. 230; Jefferson, Thomas. *Notes on the State of Virginia: A Compilation of Data About the State's Natural Resources, Economy and the Nature of the Good Society*.

⁵ Locke, John. *The Second Treatise of Government and A Letter Concerning Toleration*. New York: Dover Publications, 2012. 44.

⁶ Farrand, Max, ed. *The Records of the Federal Convention of 1787*. Vol. 2. New Haven, CT: Yale University Press, 1911. 450–53.

The Articles of Confederation had required a supermajority threshold for passage of most major legislation.⁷ The Framers believed, correctly, that this had been the cause of crippling gridlock. Roger Sherman of Connecticut, the only delegate to the Constitutional Convention to sign all four of America's founding documents, said that under the Articles, "to require more than a majority to decide a question was always embarrassing." James Wilson agreed that "great inconveniences" had "been experienced in Congress from the article of confederation requiring nine votes" out of thirteen."⁸

The Framers stated that when consensus was not forthcoming, the majority should "go forward" with the "public business" rather than yield to gridlock.

The Framers were realists who sought cooperation but realized it was not always possible. When cooperation was not forthcoming, they believed the majority should move forward. Hamilton wrote that some issues "will not admit of accommodation." In such instances, the Framers argued, the majority should rule. If the minority were allowed to block the majority, Hamilton wrote, the government's "situation must always savor of weakness, sometimes border upon anarchy." When consensus and cooperation failed, the "public business" must "go forward," he wrote. Allowing a minority faction to stop the majority invited nefarious behavior, Hamilton warned, explaining that such a system "gives greater scope to foreign corruption, as well as to domestic faction, than that which permits the sense of the majority to decide."⁹

The Framers wanted the minority to have a voice, not a veto.

The protections Madison sought for minority factions were much more modest than they are commonly portrayed by defenders of the filibuster. Madison stopped well short of advocating for supermajority thresholds, or giving the minority veto power over the will of the majority in any way. Instead, Madison favored a system of majority rule at every point where a decision was to be made, with the few exceptions enumerated in the Constitution, such as removal from office and Constitutional amendments. In *Federalist 10*, Madison explained "the republican principle" of majority rule: "If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote."

Calhoun, not Madison, sought to expand the power of the minority to give it a veto.

In his *Disquisition on Government*, Calhoun explained that his goal was to expand the minority protections created by Madison into a veto power for a numerical minority in the Senate. As he put it, he sought "to give to each interest or portion of the community a negative on the others."¹⁰ Calhoun's motivation was to preserve slavery and protect the planter class. By the time Calhoun

⁷ Binder, Sarah; and Smith, Steven. *Politics or Principle? Filibustering in the United States Senate*. Washington, DC: Brookings Institution Press, 1997. 32.

⁸ Farrand, Max, ed. *The Records of the Federal Convention of 1787*. Vol. 2. New Haven, CT: Yale University Press, 1911. 450–53.

⁹ Hamilton, Madison, and Jay, *Federalist Papers*. 102–3.

¹⁰ Calhoun, John C. *A Disquisition on Government*. Indianapolis: Hackett Publishing Company, Inc., 1953. 55.

wrote the *Disquisition*, it had become evident that the limited minority protections the Framers had built were proving too weak to hold off the march of the north's superior economic model and abolition. While the South was overrepresented in the Senate in proportion to its population, Calhoun "did not consider this overrepresentation sufficient to guarantee the interests of slaveholders," writes James H. Read, a leading Calhoun scholar.¹¹ Madison's system guaranteed the minority a voice, but that was not enough. To preserve slavery, Calhoun wanted a veto.

II. The Framers believed Senate debate should be limited

The original Senate placed firm limits on debate.

In the original Senate, debate was intended to be thoughtful but limited, and obstruction was deemed beneath the dignity of senators. A set of rules and norms gave senators tools to end debate if their colleagues became obstructive. As Vice President, Thomas Jefferson wrote a manual on procedure that included a section titled "Order in Debate," which states, "no one is to speak impertinently or beside the question, superfluously or tediously." Jefferson explained that if senators decide one of their colleagues has become tedious, and "by conversation or any other noise they endeavor to drown his voice," then in deference to his colleagues, the tedious senator should "sit down."¹² Routinely, the presiding officer would cut off senators who became dilatory, ruling them out of order. Avoiding tedium and being respectful of each other's time were points of senatorial pride. As Martin Gold, author of one of the foremost texts on Senate procedure and former counsel to Republican Senate Majority Leader Howard Baker, puts it, "The possibility that a minority of Senators could hold unlimited debate on a topic against the majority's will was unknown to the first Senate."¹³

The original Senate included a "previous question" rule allowing a majority to end debate.

One of the rules the original Senate included to limit debate was the "previous question" rule, which allowed a majority to impose cloture and end debate. Since obstruction was so rare in the early Senate, the rule was almost never used, and in 1806 was edited out of the rules. This was not, as filibuster defenders imply, a conscious decision to allow unlimited debate in the Senate. As Brookings Institution scholar Sarah Binder testified at a hearing on Senate rules reform, the Senate got rid of the previous question rule "not because senators in 1806 sought to protect minority rights and extended debate. They got rid of the rule by mistake."¹⁴

¹¹ Read, James H. *Majority Rule versus Consensus: The Political Thought of John C. Calhoun*. Lawrence: The University Press of Kansas, 2009. 203.

¹² "Thomas Jefferson, 2nd Vice President (1797–1801)." U.S. Senate. Accessed April 18, 2020. www.senate.gov/about/officers-staff/vice-president/VP_Thomas_Jefferson.htm.

¹³ Gold, Martin B.; and Gupta, Dimple. "The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster." *Harvard Journal of Law and Public Policy* 28, no. 205 (2004).

¹⁴ Binder, Sarah A. "The History of the Filibuster." Testimony before the U.S. Senate Committee on Rules and Administration. *Brookings Institution*. April 22, 2010.

The achievements of the Golden Age passed in a majority-rule Senate.

The first half of the 19th Century is often referred to as the Golden Age of the Senate, when its members included Henry Clay and Daniel Webster, along with Calhoun. The compromises that defined this era passed on a majority-rule basis. The Missouri Compromise, for example, passed by two votes.

III. The emergence of the “talking filibuster” gave the minority the power to delay bills, but almost never to block them

Calhoun paved the way for the talking filibuster by eroding the power of the Presiding Officer to call senators to order.

The elimination of the previous question rule created a loophole, but it took decades for it to be exploited, as the Senate continued to be governed by firm norms against obstruction. In the 1820s, as Vice President in the John Quincy Adams administration, Calhoun began exploiting the loophole and defying those norms. At the time, an obstructing senator could be cut off by the presiding officer, who would call the senator to order. Bitter over the “corrupt bargain” through which Adams had gained the presidency, Calhoun set a new precedent by letting a senator who insulted Adams continue talking. While Calhoun was presiding, Senator John Randolph of Virginia rose and launched into a personal tirade against Adams’ “corrupt bargain.”¹⁵ Normally, a diatribe like Randolph’s would have prompted the presiding officer to call the senator to order. But to the shock of the senators in the chamber, Calhoun let Randolph go on. “As the other senators listened in horror, Randolph rose to new heights of maliciousness,” said Senator Robert Byrd of West Virginia, in a lecture on the history of the Senate. Randolph stunned his audience by comparing Adams and Clay to “Blifil and Black George,” the well-known villains of the novel *Tom Jones*. Calhoun remained “oblivious to the many appeals to call Randolph to order,” according to Byrd.¹⁶ On the other hand, when senators rose to defend Adams and Clay, Calhoun quickly exercised his prerogative and cut them off.¹⁷ The incident caused an uproar. Calhoun “masked his enjoyment” at Randolph’s attack, Byrd explains.¹⁸ Aware of the damage that had been done, the Senate voted to overturn Calhoun’s precedent in a vain effort to reestablish the presiding officer’s authority to call senators to order. But Calhoun had undermined the norm, and the power of the presiding officer faded.

When he arrived in the Senate, Calhoun forged the talking filibuster in the name of minority rights.

¹⁵ Burdette, Franklin. *Filibustering in the Senate*. Princeton, NJ: Princeton University Press, 1940. 15.

¹⁶ Byrd, Robert. *Senate, 1789–1989, V. 1: Addresses on the History of the United States Senate*. U. S. Government Printing Office. 92.

¹⁷ *Vice Presidents of the United States, 1789–1993*. U.S. Government Printing Office, 1997. 89–90.

¹⁸ Byrd, *Senate, 1789–1989*. 92.

In 1841, Calhoun led a group of senators in one of the Senate's first filibusters. Their target was a Bank Bill being shepherded by Henry Clay. A firsthand account of this filibuster from Senator Thomas Hart Benton of Missouri records how the obstructionist senators "became assailants" and "attacked incessantly."¹⁹ One of Benton's early biographers, then-historian Theodore Roosevelt, noted disapprovingly that Benton and Calhoun were acting "not with any hopes of bettering the bills, but for outside effect, and to annoy their opponents."²⁰ But Benton found the experience thrilling. "We kept their measures upon the anvil, and hammered them continually: we impaled them against the wall, and stabbed them incessantly," he enthused. "We felt victorious in the midst of unbroken defeats," he marveled. During this episode, Calhoun forged the rhetorical link between obstruction and higher principle that is familiar today. "For the first time," Senate historian Richard Baker writes, "the principle of minority rights was applied in defense of extended debate."²¹

In the face of Calhoun's obstruction, Clay sought to restore the previous question rule.

Clay saw Calhoun's proto-filibuster as a severe threat to the Senate and moved to restore the previous question rule. In his manual, Jefferson had warned against superfluous debate, and Calhoun's obstruction qualified. "Dreadfully harassed by the species of warfare," as Benton described him, Clay had never seen anything like the obstruction waged by Calhoun.²² In response to Clay's move to restore the previous question, Calhoun flew to heights of rhetorical absurdity, claiming that the previous question rule, which had been on the Senate's own books, would be "more odious" than the Alien and Sedition Acts, which had allowed the government to jail dissidents.²³ Nonetheless, Calhoun outmaneuvered Clay, forcing him to choose between the Bank Bill and reform. Clay chose the Bank Bill.

Even as the talking filibuster emerged, majority rule remained the norm.

Through the 19th century and into the 20th, the expectation remained that after the filibustering minority had its say, they would yield to the majority. In 1848, Calhoun and his allies were filibustering a bill to organize a territorial government for Oregon because it barred slavery. But after the supporters of the Oregon bill had secured a majority, the southerners yielded and ended their filibuster. As the filibustering senators themselves explained, forcing a delay, having their say and applying pressure to the majority were all acceptable tactics, but blocking the will of the majority was not. Senator William King of Alabama said that yielding to the majority "would comport better with the dignity of the Senate, with their standing in the country, and with public sentiment, than by persisting in opposing this resolution." Senator Foote of Mississippi, another participant in the filibuster, said that he "felt authorized to declare that they [the minority] were

¹⁹ Benton, Thomas Hart. *Thirty Years' View, or a History of the Working of the American Government for Thirty Years: From 1820 to 1850*. Appleton, 1856. 249.

²⁰ Roosevelt, Theodore. *Thomas Hart Benton*. New York: Abrams, 1974. 250.

²¹ Baker, Richard A. *The Senate of the United States: A Bicentennial History*. N.p.: Krieger, 1988. 43.

²² Benton, *Thirty Years' View*. 251; Peterson, Merrill D. *The Great Triumvirate: Webster, Clay, and Calhoun*. Oxford: Oxford University Press, 1988. 305.

²³ Benton, *Thirty Years' View*. 257.

now willing to yield and let the majority take the responsibility.”²⁴ Senator Thomas Rusk of Texas agreed, pointing out that “according to the course which had heretofore been pursued in the Senate, when a majority, a clearly ascertained majority, had agreed upon a measure, it was proper that he should yield, that they might have the opportunity of passing it, and assuming to God and their country the responsibility of the act.”²⁵ The filibuster was dropped, and the Oregon bill passed - on a majority-rule vote.²⁶

The talking filibuster could delay bills, but almost never blocked them altogether.

As obstruction rose through the 19th century, the talking filibuster proved capable of delaying bills, but almost never blocking them. Over the course of the entire nineteenth century, only a handful of bills were stopped altogether by the filibuster.²⁷

IV. The supermajority threshold emerged in the Jim Crow era and blocked civil rights while other bills continued to pass or fail on a majority basis.

In 1917, the Senate introduced Rule 22 and cloture as a means to “terminate successful filibustering,” not a de facto threshold for passage.

Facing massive public backlash after a filibuster against President Wilson’s effort to arm American merchant ships, the Senate created Rule 22, putting a cloture rule on the books for the first time since 1806. Cloture was never intended to become a de facto threshold for passage. The committee that created it called it a “tool to terminate successful filibustering.”²⁸ The historian Franklin Burdette, an expert on the filibuster, described Rule 22 as “the most important potential and actual curtailment of filibustering ever undertaken in the Senate.”²⁹ Most bills continued to pass or fail based on whether they could secure a majority.

During the Jim Crow era, Rule 22’s supermajority threshold was used to block civil rights - and only civil rights.

Whenever a civil rights bill came before the Senate, southerners forced the majority to secure the two-thirds required to end debate, and declared in lofty but familiar terms that voting for cloture

²⁴ Wawro, Gregory J.; and Schickler, Eric. *Filibuster: Obstruction and Lawmaking in the U.S. Senate*. Princeton, NJ: Princeton University Press, 2013. 2.

²⁵ Bailey, George A., et al. *The Congressional Globe*. Office of the Congressional Globe, 1848. August 14, 1848. 1084.

²⁶ Bailey, George A., et al. *The Congressional Globe*. Office of the Congressional Globe, 1848. August 14, 1848. 1084.

²⁷ Koger, Gregory. *Filibustering*. Chicago: University of Chicago Press, 2010.

²⁸ Proposed Amendments to Rule XXII of the Standing Rules of the Senate, Relating to Cloture: Hearings Before a Special Subcommittee on Rules and Administration, United States Senate, Eighty-fifth Congress, First Session, on S. Res. 17, S. Res. 19, S. Res. 21, S. Res. 28, S. Res. 29, S. Res. 30, S. Res. 32, S. Res. 171, Resolutions Proposing Amendments to Rule XXII of the Standing Rules of the Senate. June 17, 24, 25, 28, July 2, 9, 16, 1957. U.S. Government Printing Office, 1957. 292.

²⁹ Burdette, Franklin. *Filibustering in the Senate*. Princeton, NJ: Princeton University Press, 1940. 221.

would be a violation of the Senate's tradition of minority rights. Their threats against anyone who dared cross them were backed up by their monopoly control of the most powerful committees. During this period, civil rights bills were the only category of legislation that consistently faced supermajority thresholds. This blockade stopped civil rights bills from passing decades earlier than they would have otherwise. A 1938 vote on an anti-lynching bill, for example, "presented the interesting spectacle of approximately two-thirds of the Senators ready to vote for the measure but less than a majority willing to close debate," according to Burdette.ⁱⁱ

The Senate was not acting as a "cooling saucer" - America was ready for action on civil rights long before 1964, but the supermajority threshold blocked it.

As early as 1891, and with increasing frequency starting in the 1920s, bills to combat lynching, poll taxes and workplace discrimination began passing the House and securing majority support in the Senate. Presidents of both parties were ready to sign them. These bills also had broad public support. In 1937, Gallup conducted its first poll of federal anti-lynching laws and found support at 72 percent nationally, with majorities favoring it in every region - including the South, where support registered at 57 percent.³⁰ Gallup first canvassed the public on poll taxes in 1941 and found that 63 percent of Americans supported ending them.³¹ Solutions existed that enjoyed broad support among the public, majority support in both chambers and support from the White House. The filibuster stopped them from passing. The human cost of this delay is incalculable.

Segregationist senators routinely voted for cloture on other issues, suggesting their stance was not principled.

Cloture only became an issue of minority rights on civil rights. On the rare occasions during this period when non-civil rights bills faced a cloture vote (about thirteen total instances over five decades), between a quarter and half of the southern caucus voted for cloture. Only on civil rights bills did ending debate become an unthinkable violation of minority rights.³²

While the supermajority threshold was applied to civil rights, other bills continued to pass or fail on a majority basis.

From the end of Reconstruction in 1877 to the passage of the Civil Rights Act of 1964, the only bills stopped by the filibuster's supermajority threshold were civil rights bills. All other bills passed or failed based on a majority-vote basis. On the rare occasions that other bills encountered a filibuster, the issue was resolved and the bills passed. As we built postwar America, civil rights was the only category of legislation forced to clear a supermajority threshold.³³

³⁰ Press Release, American Institute of Public Opinion. "Voters Approve Federal Lynch Law 7-3." New York. November 14, 1937.

³¹ Press Release, Public Opinion News Service. "First Study of Public Opinion of Poll Tax Issue Completed By Institute In National Survey." April 2, 1941.

³² Burdette, *Filibustering in the Senate*. 223

³³ Proposed Amendments to Rule XXII of the Standing Rules of the Senate, Relating to Cloture: Hearings Before a Special Subcommittee on Rules and Administration, United States Senate, Eighty-fifth Congress, First Session, on S. Res. 17, S. Res. 19, S. Res. 21, S. Res. 28, S. Res. 29, S. Res. 30, S. Res. 32, S. Res. 171, Resolutions Proposing

The supermajority threshold did not facilitate bipartisan consensus on bills like Medicare.

Medicare never faced a filibuster. Instead, it was hard-fought until it secured a majority, and then additional senators jumped on board once it became clear it was going to pass.³⁴ In 1964, LBJ's top legislative aide, Mike Manatos, sent him a memo stating that Medicare would pass because his whip count showed it had secured a majority.³⁵ Once it was clear Medicare was going to pass, it gained additional support, with 70 senators eventually voting for passage. As Thomas Mann and Norm Ornstein write, "the notion that major social policy requires broad bipartisan consensus has been belied by a host of examples. It is true that many Republicans joined Democrats in the final votes to pass Social Security and Medicare," they write, "[b]ut bitter partisan warfare and rhetoric marked the lead-up to these programs' passage, and successes came because enough members of the majority party backed those proposals."³⁶

V. By replacing the talking filibuster with a de facto supermajority threshold, the Senate has stifled debate and subjected all bills to the same gauntlet faced by civil rights.

The use of the filibuster today stifles debate instead of encouraging it.

For example, take the Manchin-Toomey background checks amendment in 2013. On an issue supported by 88 percent of the American people, the opponents were never forced to explain their opposition. In a debate that stretched over a week, the forty-five senators who opposed the background-checks bill spoke for a combined total of two hours and twenty-four minutes. All but a few minutes' worth of this "debate" came in the form of prepared speeches read to a mostly empty chamber. The leader of the opposition, Republican Leader Mitch McConnell, mostly avoided commenting on the amendment while quietly whipping votes against it. However, McConnell did find time during that week to discuss his reverence for former British prime minister Margaret Thatcher, delivering a Senate floor address celebrating her life and legacy. He also found time to introduce a resolution celebrating the recent March Madness triumph of the University of Louisville men's basketball team.³⁷ But on the leading proposal for the federal government's policy response to the massacre of twenty first-graders, the leader of the opposition contributed a grand total of two minutes of floor debate. When Senators Joe Manchin

Amendments to Rule XXII of the Standing Rules of the Senate. June 17, 24, 25, 28, July 2, 9, 16, 1957. U.S. Government Printing Office, 1957. 292.

³⁴ Zelizer, Julian. "How Medicare Was Made." *The New Yorker*. February 15, 2015.

³⁵ Klein, Ezra. "This is not how the Senate is supposed to work." *Vox*. September 29, 2017.

³⁶ Mann, Thomas and Ornstein, Norm. "Five Myths About Bipartisanship." *The Washington Post*. January 17, 2020.

³⁷ Sen. McConnell (KY). "Honoring British Prime Minister Baroness Margaret Thatcher." *Congressional Record* 159, Pt. 4 (April 16, 2013). 529; S. Res. 100. 113th Congress. "A resolution commending and congratulating the University of Louisville men's basketball team for winning its third Division I National Collegiate Athletic Association championship, and the University of Louisville women's basketball team for being runner up in the 2013 Women's Division I National Collegiate Athletic Association Basketball Tournament." Senator Mitch McConnell, lead sponsor. Introduced April 16, 2013.

and Pat Toomey took to the floor and offered to engage in an open discussion with anyone who had concerns about their bill, the opposition largely declined to take them up on it. The chamber remained mostly empty as the two senators gamely tried making their case to colleagues who refused to listen.

Whereas the minority used to wield a veto on civil rights, today it wields a veto on all issues.

The application of the supermajority standard has gone from only applying to civil rights, to the de facto standard for all issues. Where cloture used to be applied a handful of times per session, today it is applied to nearly every piece of Senate business.

The replacement of the talking filibuster with a de facto supermajority threshold has shifted the Senate from Madison's vision to Calhoun's vision.

Madison envisioned a Senate where debate was thorough and thoughtful, and the minority was guaranteed a voice in the process, but where at the end of the day, the business of the nation could go forward - on a majority-vote basis, if necessary. By contrast, Calhoun envisioned a Senate where the minority could wield a veto over any issue it chose. By backsliding into a de facto supermajority threshold, today's Senate has moved away from Madison's vision, and acquiesced in Calhoun's vision of a Senate where the minority wields a veto over the majority. The result of this supermajority standard is the exact gridlock that the Framers predicted.