



To: Interested Parties

Fr: Adam Jentleson, Executive Director, Battle Born Collective

Re: New York Times Op-Ed: When Will Biden Join the Fight for Voting Rights?

Dt: August 30, 2021

I wanted to make sure you saw [a piece](#) I published in the *New York Times* yesterday outlining what more Biden could be doing to pass voting rights. Below is a summary of key points and facts. The simple fact is that President Biden is not pulling out all the stops to pass voting rights, despite the enormity of the threat to our democracy.

One of the options available to Biden and Senate Democrats includes passing voting rights by a simple majority without ever voting to change the filibuster rules.

The Senate is recreating the double-standard that upheld Jim Crow

- The Senate is quietly becoming what it used to be: an institution ruled by a simple majority - but not for voting rights.
- Biden is on track to become the most productive Democratic president in a generation, not because he followed Senate norms and traditions, but because he broke them.
- Every president in recent memory has largely passed bills with 60 votes, the number needed to overcome a filibuster. Biden has passed most of his agenda with just 50, bypassing the filibuster.
- Nearly two trillion in economic stimulus and Covid relief, as well as a budget blueprint that opens the door to roughly \$3 trillion in additional spending, along with dozens of executive and [judicial nominees](#), have [cleared the Senate](#) with simple majorities, often with all 50 Democrats voting together, and no Republicans joining them.
- Yet as other bills sidestep filibusters, civil rights bills are still forced to overcome them.
- This has happened before. During the Jim Crow era, the Senate held long, contentious debates on the bills that built the middle class, such as Social Security or Medicare, but none of those bills needed to get a supermajority to proceed. By contrast, popular bills to stop lynching, end poll taxes and fight workplace discrimination faced endless filibusters, and were blocked by supermajority thresholds.
- While Biden and Senate Democrats aren't intentionally recreating such an unfair system, in practice, they are perpetuating the same double standard that upheld Jim Crow for almost a century.

Democrats should create a fair standard governed by the Warnock principle

- In March, during his first speech on the Senate floor, Senator Raphael Warnock [argued](#) that “no Senate rule should overrule the integrity of our democracy.” If Senate rules happen to preserve what Warnock called “Jim Crow in new clothes,” just as they preserved the original version, they must be reformed.
- This means finding the political will to never again allow bills that guarantee equal access to voting and representation to suffer unequal treatment.

The Senate can pass voting rights without altering filibuster rules

- Today, the standard that determines which bills receive majority votes is effectively arbitrary.
- Many kinds of policies are passed through reconciliation, a special procedure created in the 1970s to allow budgetary measures to proceed with a simple majority vote.
- Because Senator Robert Byrd wanted to prevent the procedure from being used to pass major legislation en masse, he imposed a set of strict tests.
- Though clever legislators bend the rules far beyond their original intent, the “Byrd rule” can only be stretched so far. Trying to force civil rights bills into this budgetary track will run afoul of the Senate parliamentarian, Elizabeth MacDonough, a staff member who delivers the initial judgment on which provisions comply.
- Senators can align the chamber with basic principles of justice by altering this standard to include civil rights bills, an appropriate update since Byrd’s legacy includes delivering [one of the longest filibusters](#) against civil rights.
- This process requires senators to reclaim their right to shape the rules of the Senate even when doing so runs afoul of the parliamentarian, whose influence has [grown dramatically](#) in recent decades.
- The parliamentarian is a staffer who delivers advisory opinions. Only senators and the vice president preside over and vote in the Senate, and they have final say over what gets included in reconciliation bills.
- Senators can include civil rights in the forthcoming reconciliation bill and, when the parliamentarian rules that it runs afoul of the Byrd rule, Vice President Kamala Harris can issue her own ruling asserting that it does not. Fifty senators can sustain her ruling and pass voting rights, without ever having to vote to alter the filibuster itself.
- There is precedent for overruling the parliamentarian. Vice President Nelson Rockefeller did it in 1975.

- In previous eras, the chair (or presider) exercised far more discretion over the proceeding of the Senate, rather than acting as automatons reading from the paper staff hands them, as they do today.
- In 1826, John C. Calhoun, when he was presiding over the Senate as vice president, issued a ruling that opened the door to obstruction.
- Robert Byrd's legacy includes one of the longest filibusters against civil rights in Senate history - a 14-hour filibuster against the 1964 Civil Rights Act. It would be fitting for senators to alter the Byrd rule, which governs what complies with reconciliation, to include civil rights and voting rights.

Biden can do more - LBJ is the model

- Biden has invited comparisons to Lyndon Johnson, but Johnson paired accomplishments like Medicare with the Civil Rights and Voting Rights Acts.
- Then, as now, the task was deemed so daunting that some cautioned against investing too much of the president's political capital in the effort. By the time of his assassination, John F. Kennedy had let segregationists take civil rights hostage to his top domestic priority: a tax cut.
- When Johnson's advisers counseled him to give up on civil rights, too, he [shot back](#), "What the hell is the presidency for?"
- Johnson personally intervened to get the civil rights bill to the floor, then forced his former mentor, fellow Democrat and self-avowed white supremacist, Senator Richard Russell, to lead a filibuster for roughly three months, betting that he could crack an obstructionist front that had remained solid since Reconstruction ended in 1877.
- Johnson had to deal with more than a few reluctant senators — most of those ones filibustering the civil rights bill were Democrats.
- To win passage, Johnson did not use magic powers. He simply spent months working every angle, relentlessly.