

The Filibuster and Legislative Discussion

Shu Fu and William G. Howell*

January 18, 2022

Abstract

We investigate whether the filibuster stimulates public debate and discussion within Congress, as its advocates argue; or whether, instead, it discourages legislators from devoting time and attention to bills they know will not pass, as its critics attest. To do so, we exploit multiple sources of variation in the filibuster, measures of legislative discussion, and identification strategies. In the preponderance of analyses, we observe null effects. Where significant differences are observed, they nearly always suggest that a strengthening (weakening) of the filibuster coincides with a reduction (increase) in the volume of floor speeches or time devoted to legislative affairs. Whatever benefits the filibuster may confer, they do not appear to include enhanced discussion on the floors of Congress.

***Shu Fu** is Postdoctoral Teaching Fellow in the Political Science Department and the College, the University of Chicago. **William G. Howell** is the Sydney Stein Professor in American Politics at Harris Public Policy and Chair of the Political Science Department, the University of Chicago. We thank Lukas Alexander for excellent research assistance. Versions of the paper were presented at the American Politics Workshop at the University of Chicago and the 2022 Annual Meetings of the Southern Political Science Association.

“I’ve got a few things I want to say to this body... And as a matter of fact, I’m not gonna leave this body until I do get them said.” James Stewart in Mr. Smith Goes to Washington.

Does the filibuster enhance legislative discussion? Defenders of the Senate rule respond decisively in the affirmative. By forcing proponents of a bill to publicly engage skeptical colleagues and by slowing the pace of legislative change, they argue, the filibuster simultaneously enables and encourages Senators to more thoroughly air their differences about proposed bills. When arguing against a 1975 proposal to weaken the filibuster by reducing the number of votes needed to invoke cloture, Senator James Allen (D-AL) insisted that the filibuster guarantees “extended debate” and thereby brandishes the Senate’s “reputation as a deliberative body.”¹ Or as a *Congressional Research Service* report (2013) summarized the views of the rule’s advocates, the filibuster promises to “cool passions and force deliberation.”

Critics of the filibuster see things very differently. Rather than stimulating discussion, they argue, the primary effect of the filibuster is to suppress the adoption of meaningful policy change. As a result, substantive policy debates give way to political posturing and nearly constant electioneering, rendering the floor of this purportedly deliberative body nearly devoid of meaningful exchange. Making the case for the filibuster’s elimination in 2020, Ezra Klein (2020) put the matter this way: “The irony of the modern filibuster is that it rarely includes debate, and often prevents it. Indeed, senators often filibuster the motion to begin debate on legislation, which reveals how thin the commitment to deliberation actually is.”

Which perspective is closer to the truth? It is hard to say. For all that has been written on the filibuster (for a review, see Fong and Krehbiel, 2018, 2–4), no empirical study has systematically evaluated its actual impact on legislative discussion. Casual impressions and selected anecdotes that invariably align with one’s normative priors routinely populate arguments either for or against the filibuster. Systematic evidence, however, is entirely missing.

This paper initiates the process of building an empirical foundation for assessing these competing claims. To do so, it tracks patterns of legislative discussion before and after the filibuster underwent significant changes in the 19th, 20th, and 21st centuries. Making use of multiple sources

¹Congressional Record, 9th Session, 1st Session, Vol. 121, Part 1, pp. 940, 942.

of variation in the filibuster, measures of legislative discussion, and identification strategies, we recover reasonably consistent findings. In the preponderance of analyses, we observe null effects. Where significant differences are observed, they nearly always suggest that strengthening (weakening) the filibuster coincides with a reduction (increase) in legislative discussion.

Overall, we do not find any credible evidence that the filibuster enhances legislative discussion and debate. The filibuster may detract from legislative discussion, or it may have no meaningful effect at all. But it does not appear to increase the volume—and hence, one might reasonably infer, the quality—of legislative deliberations on the floors of Congress. Arguments on its behalf, we conclude, must rest on alternative grounds.

1 Normative Debates over the Filibuster

Congressional reformers now argue that the legislative process generally, and its supermajoritarian requirements in particular, need overhauling (Barnes et al., 2021; Brian, 2021; Davis and Heitshusen, 2013; Fredrickson, 2020; Jentleson, 2021; Lau, 2021; Klein, 2020; Strand and Lang, 2017; Williamson, Baptiste and Spaulding, 2021). While assuming increasing urgency in an era of partisan polarization and congressional gridlock, these debates are hardly new. For centuries, political observers have debated the merits of supermajoritarian requirements on a variety of normative grounds (Schwartzberg, 2014). Contemporary defenders of the filibuster emphasize the benefits of policy compromise, policy stability, and bipartisanship, whereas detractors decry the obstructionism, paralysis, and partisan intransigence that they see the filibuster causing.

Amidst these debates, concerns about legislative discussion and debate loom large. By enabling legislators to hold the floor for extended periods of time, the filibuster rather directly prolongs debate. But even in the aftermath of the so-called “talking filibuster,” the voting rule may nonetheless stimulate discussion and debate. By requiring a supermajority of Senators to invoke cloture, advocates of the filibuster argue, members of the majority party must curry the support of at least some members of the opposition. So doing, they may have to moderate their policy claims, of course, but they also must listen to criticism, sharpen their arguments, and engage in additional dialogue aimed at winning over skeptics of their legislative proposals. The filibuster, as such, does not merely slow the pace of lawmaking. It also enriches the process through greater public engagement. As Ruth

Marcus (2010) explained in a *Washington Post* op-ed, the filibuster “enhances the opportunity for real debate” and thereby ensures the enactment of “a better end product.”

The filibuster, as such, is very much in keeping with what Richard Arenberg and Robert Dove (2012) call the “soul” and “character” of the Senate. As Franklin Burnett (1940, 236) noted in the first book-length investigation of the filibuster, “Senators are proud to be entrusted with responsibility for thorough analysis of legislation, and they value the privilege and utility of unlimited speech to enable the presentation of every possible view.” Or as Robert Byrd (1988, 162) made the point roughly a half century later, “We must not forget that the right of extended, even unlimited, debate is the main cornerstone of the Senate’s uniqueness.” Supermajoritarian procedures do not merely instantiate the Senate’s commitments to sustained consideration of policy proposals. The filibuster all but guarantees them, as minorities within the Senate can command the floor, raise any manner of concerns, and demand a response.

Historically, critics of the filibuster have responded in one of two ways. The first is by emphasizing a competing consideration. Yes, they admit, the filibuster enhances legislative discussion, which may have consequences for the formation of coalitions and production of laws (see, e.g., Zelizer, Forthcoming) or the quality of the public’s representation in Congress (see, e.g., Hill and Hurley, 2002; Grimmer, 2013; Maltzman and Sigelman, 1996). These downstream benefits, however, must be weighed against the costs of legislative obstruction and gridlock. After taking his oath of office in 1925, Vice-President Charles Dawes delivered from the Senate rostrum a scathing critique of parliamentary procedures, very much including the filibuster, that unduly protected each Senator’s “right to be heard” at the cost of abandoning “the greater right of the Senate to act.”² Speech that does not ultimately give way to action, Dawes insisted, does little to enhance democratic governance; and for that reason alone, he argued, Congress should abandon rules like the filibuster that augment legislative discussion while curtailing lawmaking.

Other critics simply refuse to concede the premise. The filibuster does not enhance discussion or debate, they argue. To the contrary, by establishing a nearly impossible threshold for legislative action, particularly in a period of bare majorities and partisan polarization, the filibuster convinces legislators to throw up their arms, turn away from the legislative process, and set their sights on the next election. As Caroline Fredrickson (2020) argues in a *Brennan Center* position paper, “for

²Congressional Record, Vol. 70, March 4, 1925, p. 4852.

decades, the filibuster has ceased to serve the purpose of allowing contrary ideas to be aired and promoting debate. The simple threat of objection simply ends all discussion.” Or again, Ezra Klein (2020): “Parties use the filibuster to stop their opponents from passing legislation, not to encourage discussion.” The filibuster does not augment debate through either its actual exercise or the incentives to compromise that it ostensibly establishes. Rather, critics argue, the filibuster saps Congress’s capacity for both discussion and action.

2 Data

To assess the merits of these competing arguments, we build a variety of datasets that link multiple changes in the filibuster with multiple measures of legislative discussion. We exploit five sources of variation in the rules and norms governing the filibuster:³ the 1917 adoption of Senate Rule XXII, which established cloture, and which limited the ability of a single Senator to hold the floor indefinitely; the 1975 reduction in the number of votes needed to invoke cloture from two thirds to three fifths; Mitch McConnell’s assumption of leadership in the Senate in 2007, when, according to some scholars (e.g., Thomas and Ornstein, 2012), the norms governing the use the filibuster relaxed significantly, and the number of filibusters increased dramatically (see Figure A.1 in Online Appendix); and the elimination of the “the disappearing quorum” in the House in the late 19th century.⁴ With the exception of the 2007 shift in norms, all of these changes weakened the filibuster and hence, if its advocates are correct, should have coincided with a decrease in legislative discussion.

We also deploy multiple measures of legislative discussion. First, we calculated the total volume of floor speeches delivered by each Senator and House representative. To do so, we drew from the *Congressional Record* from the 43th to the 114th Congresses (1873–2016), as consolidated by Gentzkow, Shapiro and Taddy (2018). We dropped all non-substantive speeches—those with fewer

³While arguably the most important, these five sources of variation obviously do not exhaust the full complement of procedural changes to the filibuster. Carve-outs in 1970 for trade and in 1974 for budgetary reconciliation bills, for example, are excluded. For a longer list, see Binder and Smith (1997), Table 1–1.

⁴Before 1889, the House retained a procedural loophole that functioned much like the contemporary filibuster. To deny the majority a quorum, members of the minority party, despite sitting in the chamber, could decline to vote and be marked absent, exercising what some scholars would later call “the disappearing quorum” (Litt, 2021). By calling attendance, Speaker Thomas Brackett Reed altered the rule at the start of the 51st Congress (1889). In 1891, Democrats regained control of the House and reversed Reed’s rule change—but Reed, now minority leader, used the reinstated rule to such frustrating effect that his opponents had no choice but to re-abolish it two years later, this time permanently.

than 30 words⁵—and then calculated the remaining number of words spoken by each legislator in a given year.

Our subsequent measures consider specific subjects of legislative discussion. As our second measure, we calculate the length of time devoted to “landmark” bills, as determined by Mayhew (1991). For every bill, we identified the dates when the House and Senate reported a bill out of the Rules Committee, discussed the bill on the floor, cast votes, and considered conference reports to resolve chamber differences.⁶ We then calculated the total number of days spent on each bill.⁷

As our third and final measure, we count the number of words each Senator delivered on the floor about every appellate and district court nominee during the Obama administration (2009–2016). Among 323 confirmed judicial nominees, 207 were confirmed before the filibuster was eliminated for judicial nominees, and 116 were confirmed afterwards. Using an automated algorithm, we filtered all senatorial floor speeches from 2009 to 2016 for the subset that included either the nominee’s full name (e.g., Allyson K. Duncan), her first and last name (e.g., Allyson Duncan), or her titled name (e.g., Judge Duncan). To ensure that these speeches concern a nominee’s considered appointment to the bench, we required the nominee’s last name appearing more than once. Subsequently, we validated each filtered speech by human reading to confirm that it focused narrowly on a nominee’s confirmation.

3 Analysis

Two classes of identification problems confront this project. First, changes in filibuster rules and norms are not randomly assigned. To the contrary, they may either coincide with or presage larger debates over public policy (Wawro and Schickler, 2006, 32–34), which themselves covary with our measures of legislative discussion. Second, and as already indicated, the topics of Senate debate—be they bills or nominees—may depend upon the rules of consideration. Changes in these rules, therefore, may alter the subjects of the Senate’s agenda, further complicating our efforts to recover

⁵On further inspection, we found that speeches with fewer than 30 words were generally procedural, such as members yielding time, appreciating the speaker, recording a vote, etc.

⁶Given the difficulties of linking proposed bills with landmark laws that are ultimately enacted, we did not collect scheduling data during the periods when bills were either held in committee or were subject to votes on amendments.

⁷Note, Congress.gov provides scheduling information at the daily, not hourly, level. As a result, we cannot calculate the precise amount of time spent within each day deliberating on a bill.

plausible estimates of the effects of the filibuster on specific topics of legislative discussion.⁸

To address these identification challenges, we deploy a variety of strategies that intermittently exploit within-member variation in speech patterns, leverage the House as a control group, limit the sample to particular classes of congressional activity, and control for observable features of Senate votes. Each strategy has strengths and weaknesses, and none is dispositive. To the extent that they yield reasonably consistent findings, however, we may proceed with a greater measure of confidence in our assessment of the effects of the filibuster on legislative discussion.

3.1 All Floor Speeches

To begin, we assess how changes in the filibuster correlate with the overall volume of legislators' speeches. Here, we limit the analyses to four of our sources of variation in the filibuster: the cloture adoption in 1917; the cloture threshold change in 1975; norm changes in 2007; and the House filibuster rule changes in 1889 and 1893. To account for unobserved heterogeneity of legislators, we conduct within-member analyses of floor speeches at the level of individual legislator around 1917, 1975, 2007, and 1889. Because the filibuster rule changes in 1917 and 1975 as well as the norm change in 2007 focused narrowly on the Senate, and because the rule changes in 1889 and 1893 were limited to the House, we treat legislators in the adjoining chamber (the House in 1917, 1975, and 2007 and the Senate in 1889 and 1893) as control groups.⁹

Specifically, we implement the following difference-in-differences design:

$$\text{Log}(\text{Number of Words}_{i,t}) = \alpha_i + \delta_t + \beta \text{Filibuster Rule/Norm Change}_{i,t} + \epsilon_{i,t},$$

where subscript i denotes each individual legislator and t denotes the year. The dependent variable is the logarithm of number of words spoken by a legislator in a given year;¹⁰ α_i represents legislator fixed effects, which account for all time-invariant individual characteristics of their baseline

⁸When considering the larger public benefits of enhanced discussion, you'll note, this latter concern no longer arises, as agenda changes are properly understood as occurring post-treatment. When trying to assess the general public benefits of enhanced congressional debate, as opposed to local improvements in discussions afforded specific policy proposals, one should not control for the agenda when estimating the filibuster's downstream effects.

⁹Given the possibility of spillovers, of course, the adjoining chamber never functions as a pure control group. The strength of this research design, as such, hinges upon the relative degree of independence across the House and Senate.

¹⁰Models that characterize the dependent variable in levels without the log transformation yield findings that broadly conform with those reported here. Where differences arise, as shown in Online Table A.1, they run contrary to the claims of advocates of the filibuster.

speech patterns and their correlates; and δ_t represents year fixed effects, which flexibly controls for secular changes of legislative discussion over time. Legislators who switched chambers are given two identifiers. The filibuster rule or norm change is the key treatment, which in each regression applies to only one chamber, and which is coded 1 in those years after the rule or norm changed. The coefficient β tells us how the rule or norm change correlates, on average, with legislative discussion by each treated lawmaker.¹¹ Since rule and norm changes are applied at the chamber level, we report the standard errors clustered by chamber of each session. Finally, we estimate these regressions over incrementally larger time windows that vary from one to five congressional sessions immediately before and after the rule or norm change.

Table 1 presents our main results. When examining discussion trends around 1917, when the Senate established the cloture rule, we find very little evidence of broader changes in discussion patterns, a finding that is consistent with Burdette’s (1940, 7) observation that “the provision authorizing cloture has had less effect on filibustering than might have been anticipated.” Very little also appears to have changed around 1975, when the Senate lowered the threshold from two thirds to three fifths. For all sizes of the windows, again, we recover null results; and in some instances, the estimated coefficients switch signs.

If we view the sharp increase in the use of the filibuster as a norm change that happened in 2007, we might expect more discussion and debate on the Senate floor. The empirical evidence, however, does not bear this out. Rather, we find significantly lower levels of legislative discussion in the aftermath of McConnell’s rise to power. Regardless of the size of the windows examined, we find that speeches declined by somewhere between 13.9% and 28.1%. The new norm of subjecting nearly every bill to a filibuster did not encourage legislative discussion; if anything, it appears to have depressed it.

This pattern of findings carries over into the 19th Century. As the bottom panel of Table 1 shows, legislators spoke more in the aftermath of the disappearing quorum’s elimination than they did before. Apart from the one-session window, all estimates are positive, though none are statistically significant. Recall that the House killed the filibuster at the beginning of the 51st

¹¹Our estimates of the effect of the filibuster crucially depend upon the parallel-trends assumption. Specifically, it assumes that the trend of floor speech volume of senators overtime should be the same as the trend of floor speech volume of House members, in absence of the filibuster rule change. Reassuringly, in the period leading up to the rule change, as shown in Online Figure A.2, the two time series track each other well.

Table 1: Congressional Floor Speech Length and Rule Changes on the Filibuster

Cloture Adoption in 1917					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Adoption	0.105 (0.287)	-0.041 (0.541)	0.010 (0.407)	-0.043 (0.376)	-0.079 (0.340)
Observations	2,473	5,206	7,835	10,126	12,253
R ²	0.749	0.626	0.612	0.594	0.592
Cloture Reduction in 1975					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Reduction	-0.019 (0.027)	-0.103 (0.083)	0.008 (0.253)	0.031 (0.206)	0.034 (0.183)
Observations	2,126	4,261	6,478	8,608	10,745
R ²	0.875	0.828	0.712	0.716	0.715
Norm Change in 2007 to Use Filibuster More Expansively					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Norm Change	-0.139** (0.010)	-0.206** (0.046)	-0.281** (0.057)	-0.231 (0.159)	-0.207 (0.144)
Observations	2,144	4,279	6,535	8,675	10,810
R ²	0.863	0.789	0.785	0.704	0.709
House Disappearing Quorum Eliminated in 1889, 1893					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Eliminated in House	-0.283 (0.731)	0.313 (0.852)	0.367 (0.399)	0.472 (0.385)	0.435 (0.351)
Observations	1,650	3,293	5,311	7,053	9,150
R ²	0.773	0.667	0.659	0.615	0.610

Note:

*p<0.05; **p<0.01.

All models include legislator and year fixed effects.

Robust standard errors clustered by chamber of each session.

Congress, reinstated it in the 52nd Congress, and then permanently eliminated it in the 53rd. The estimates in columns 4 and 5, which incorporate all of this variation, may be preferred.

These results do not appear to mask underlying variation. As shown in Online Tables A.2–A.5, similar findings are recovered from models that separately examine the deliberative practices of Democrats and Republicans and of members of the majority and minority parties. Throughout,

we do not see any clear evidence that the filibuster enhances legislative discussion.

3.2 Landmark Legislation

The preceding analyses aggregated all floor speeches to the member-by-year level. We now focus on the amount of time each chamber spent discussing and debating landmark laws. Using ordinary least square, we estimate the following regression:

$$\text{Senate Days}_i = \beta_0 + \beta_1 \text{Filibuster Norm Change}_i + \beta_2 \text{House Days}_i + \beta_3 \text{Introduced in Senate}_i + \epsilon_i,$$

where i represents each landmark bill and the dependent variable is the number of days spent in the Senate discussing a given bill, and the key variable of interest identifies those bills that were considered after the change in filibuster norms. We include controls for the number of days spent in the House discussing each bill as well as an indicator for whether a bill was first introduced in the Senate. As in the previous section, we estimate these regressions during five different time windows. Because detailed scheduling data are only available after 1980, we limit our analysis to the 2007 change in norms.

Table 2: Deliberation of Major Legislation and Filibuster Norm Change in 2007

	Dependent Variable: Considering Days in Senate				
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Norm Change	1.051 (2.331)	2.457 (1.610)	1.091 (1.360)	0.406 (1.190)	0.908 (1.014)
Days Considered in House	1.319 (0.735)	0.165 (0.205)	0.111 (0.190)	0.074 (0.174)	0.132 (0.156)
Bill First Introduced in Senate	1.855 (3.646)	1.948 (2.384)	0.897 (2.005)	0.772 (1.672)	2.076 (1.334)
Constant	0.175 (3.082)	2.898 (1.669)	4.061** (1.423)	4.330** (1.281)	3.810** (1.131)
Observations	24	47	68	80	99
R ²	0.143	0.057	0.013	0.005	0.030

Note: *p<0.05; **p<0.01.

Table 2 presents the results. The coefficients are generally positive, indicating that somewhere between 0.4 and 2.5 more days were spent discussing landmark bills in the aftermath of the norm

change. None of the point estimates, however, even approach conventional levels of statistical significance. Moreover, the size of the point estimates is smaller for the longer windows, which included larger numbers of observations and, consequently, more precise estimates. Once again, we do not find evidence that changes in the filibuster significantly altered patterns of congressional discussion and debate.

3.3 Judicial Nominees

We now examine the Senate floor speeches about the 323 nominees who Obama nominated to the federal district or appellate courts during his time in office. To do so, we exploit within-Senator variation in speech patterns via the following regression:

$$\text{Log}(\text{Number of Words}_{i,j} + 1) = \alpha_i + \beta_1 \text{Elimination of Filibuster}_j + \beta_2 \text{District Court}_j + \epsilon_{i,j},$$

where subscript i again refers to each individual Senator and subscript j refers to each judicial nominee. The dependent variable is the logarithm of the number of words that each Senator delivered on the floor about each judicial nominee. The independent variable, $\text{Elimination of Filibuster}_j$, is identified by judicial nominees whose confirmation date is later than November 21, 2013, when the filibuster was eliminated. The inclusion of α_i accounts for all sources of time-invariant heterogeneity of individual Senators. In addition to controlling for the level of the considered nomination, we also run separate regressions for district and appellate court nominees.

Table 3 presents the results. After eliminating the filibuster for appellate and judicial nominees, we find, the volume of Senators' speeches declined only by an average of roughly 2 percent, an effect that is not statistically significant. When disaggregating the data, however, we find that this overall effect varies markedly for appellate and district court nominees. As columns 2 and 3 show, the length of speeches increased by 6 percent for appellate court nominees after the filibuster was eliminated, which is statistically significant, whereas speeches for district court nominees declined by slightly more than 3 percent, an effect that just misses the threshold for statistical significance.

There are reasons not to put too much stock in either of these findings. To begin, the estimated effect in column two is fragile. When estimating this regression in levels rather than logs, the point estimate diminishes markedly in magnitude and is no longer statistically significant (see Online

Table 3: Discussion of Judicial Nominees and Elimination of the Filibuster in 2013

	Dependent Variable: Log Word Counts		
	All Courts (1)	Appellate Courts (2)	District Courts (3)
Elimination of Filibuster	-0.017 (0.014)	0.060** (0.018)	-0.031 (0.016)
District Courts	-0.082** (0.008)		
Senator FE	✓	✓	✓
Unique Senator	155	155	155
Unique Nominee	323	55	268
Observations	50,065	8,525	41,540
R ²	0.301	0.332	0.307

Note:

*p<0.05; **p<0.01.

Robust standard errors clustered by each session.

Table A.6). Moreover, the reported finding is largely driven by three nominees to the U.S. Court of Appeals for the D.C. Circuit: Patricia Millett, Robert L. Wilkins, and Nina Pillard.¹² If these three observations are dropped from the analysis, as shown in Online Table A.7, the recovered point estimate shrinks by nearly 80 percent and is no longer statistically significant. Alternatively, when expanding the pool of observations to also include nominees who were not confirmed, as we do in Online Table A.8, the point estimate again shrinks in magnitude and no longer approaches standard thresholds for statistical significance.

The estimated effect for district court nominees, meanwhile, may be an artifact of term effects. It is quite possible that judicial nominees considered late in a president’s tenure in office, as a matter of course, routinely attract less discussion. To investigate this possibility, we replicated our analysis for all district and appellate court appointees during George W. Bush’s tenure in office. By splitting the data at exactly the same break-point in his second term—specifically, November 21, 2005—we conduct a simple placebo test. As we show in Online Table A.9, nominees considered after this date were discussed at shorter length than were those who were considered before. The negative effect in Table 3, as such, may have less to do with the filibuster’s elimination than with Senators’ general tendency to deliberate less on nominees who appear before them in the waning months and years of a presidential administration.

¹²After the filibuster was eliminated, Obama advanced these three candidates for consideration. While facing significant Republican opposition, all three candidates were confirmed, but not without substantial debate.

4 Conclusion

While a robust literature documents the filibuster’s relevance for coalition-building and lawmaking (see, notably, Binder and Smith, 1997; Wawro and Schickler, 2006), this paper provides the first systematic evidence of its effects on congressional discussion and debate. Relying upon a wide variety of measurement and identification strategies, we do not find any evidence that the filibuster enhances the Senate’s consideration of laws or judicial nominees. Most of our analyses suggest that changes in the filibuster did not significantly alter the volume of speech or time devoted to congressional debate. Where differences are observed, meanwhile, they usually indicate that the filibuster detracts from, rather than bolsters, public discussion on the floors of Congress.

This paper assuredly does not exhaust all possible areas of inquiry into the relationship between supermajoritarian voting procedures and legislative discussion. Here, we focus on discussions on the floor. It is possible that the filibuster affects discussions earlier in the legislative or nomination processes or through private channels of communication. We further recognize that the filibuster may alter, if not the volume or duration of speech, then its logical consistency, justifications, attention to the common good, and other qualities of political discourse (see, e.g., Steenbergen et al., 2003).

Still, it is noteworthy that we find so little evidence of speech pattern changes at precisely those junctures of the legislative and confirmation processes where the filibuster is most proximately applied. If nothing else, our findings shift the burden of proof to those who wish to argue that the filibuster encourages Senators to slow down, scrutinize the merits of proposed laws and judicial nominees, and publicly engage one another. On the Senate floor, at least, the filibuster does not appear to support these laudable objectives. If anything, it may degrade them.

References

- Arenberg, Richard and Robert Dove. 2012. *Defending the Filibuster: The Soul of the Senate*. Indiana University Press.
- Barnes, Mel, Norman Eisen, Jeffrey A. Mandell and Norman Ornstein. 2021. “Filibuster Reform is Coming—Here’s How: Seven Ideas for Change.” *Brookings Institution* . September 13.
URL: <https://www.brookings.edu/research/filibuster-reform-is-coming-heres-how/>
- Binder, Sarah A. and Steven S. Smith. 1997. *Politics or Principle? Filibustering in the United States Senate*. Washington, D.C.: Brookings Institution.
- Brian, Danielle. 2021. “A Practical Way Forward on Filibuster Reform.” *Project on Government Oversight* .
URL: <https://www.pogo.org/letter/2021/06/a-practical-way-forward-on-filibuster-reform/>
- Burdette, Franklin L. 1940. *Filibustering in the Senate*. Princeton, NJ: Princeton University Press.
- Byrd, Robert C. 1988. *The Senate, 1789–1989: Addresses on the History of the United States Senate*. Washington D.C.: U.S. G.P.O.
- Davis, Christopher M. and Valerie Heitshusen. 2013. “Proposals to Change the Operation of Cloture in the Senate.” *Congressional Research Service* .
URL: <https://crsreports.congress.gov/product/pdf/R/R41342>
- Fong, Christian and Keith Krehbiel. 2018. “Limited Obstruction.” *American Political Science Review* 112(1):1–14.
- Fredrickson, Caroline. 2020. “The Case Against the Filibuster.” *Brennan Center for Justice* . October 30.
URL: <https://www.brennancenter.org/our-work/research-reports/case-against-filibuster>
- Gentzkow, Matthew, Jesse M. Shapiro and Matt Taddy. 2018. *Congressional Record for the 43rd-114th Congresses: Parsed Speeches and Phrase Counts*. Palo Alto, CA: Stanford Libraries.
- Grimmer, Justin. 2013. *Representational Style in Congress: What Legislators Say and Why It Matters*. Cambridge University Press.
- Hill, Kim Quaille and Patricia A. Hurley. 2002. “Symbolic Speeches in the U.S. Senate and Their Representational Implications.” *Journal of Politics* 64(1):219–231.
- Jentleson, Adam. 2021. *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy*. Liveright.

- Klein, Ezra. 2020. "The Definitive Case for Ending the Filibuster." *Vox* . October 1.
URL: <http://www.vox.com/21424582/filibuster-joe-biden-2020-senate-democrats-abolish-trump>
- Lau, Tim. 2021. "The Filibuster, Explained." *Brennan Center for Justice* . April 26.
URL: <https://www.brennancenter.org/our-work/research-reports/filibuster-explained>
- Litt, David. 2021. "We Already Got Rid of the Filibuster Once Before." *The Atlantic* . March 8.
URL: www.theatlantic.com/ideas/archive/2021/03/we-already-got-rid-filibuster-once-before/618201/
- Maltzman, Forrest and Lee Sigelman. 1996. "The Politics of Talk: Unconstrained Floor Time in the U.S. House of Representatives." *The Journal of Politics* 58(3):819–830.
- Marcus, Ruth. 2010. "Why the Filibuster is Frustrating but Necessary." *The Washington Post* . January 27.
URL: <https://www.washingtonpost.com/wp-dyn/content/article/2010/01/26/AR2010012603433.html>
- Mayhew, David R. 1991. *Divided we govern : party control, lawmaking, and investigations, 1946-1990*. New Haven: Yale University Press.
- Schwartzberg, Melissa. 2014. *Counting the Many: The Origins and Limits of Supermajority Rule*. Cambridge University Press.
- Steenbergen, Marco, Andre Bachtiger, Markus Spornli and Jurg Steiner. 2003. "Measuring Political Deliberation: A Discourse Quality Index." *Comparative European Politics* 1(1):21–48.
- Strand, Mark and Tim Lang. 2017. "The Sausage Factory. The U.S. Senate Filibuster: Options for Reform." *Congressional Institute* . September 25.
URL: <https://www.congressionalinstitute.org/2017/09/25/the-u-s-senate-filibuster-options-for-reform/>
- Thomas, Mann and Norman J. Ornstein. 2012. "Let's Just Say It: The Republicans are the Problem." *The Washington Post* . April 27.
- Wawro, Gregory and Eric Schickler. 2006. *Filibuster: Obstruction and Lawmaking in the U.S. Senate*. Princeton University Press.
- Williamson, Laura, Alex Baptiste and Stephany Rose Spaulding. 2021. "End the Filibuster: How a Relic of Jim Crow Could Block Our Progressive Agenda." *Demos* . March 9.
URL: <https://www.demos.org/policy-briefs/end-filibuster-how-relic-jim-crow-could-block-our-progressive-agenda>
- Zelizer, Adam. Forthcoming. "Talking Shops: The Effects of Caucus Discussion on Policy Coalitions." *American Journal of Political Science* .

The Filibuster and Legislative Discussion

Shu Fu and William G. Howell

Online Appendix

Figure A.1: Number of Cloture Motions Filed over Time (1917–2020)

Figure A.2: Average Logged Number of Words Spoken on the Floor per Legislator per Year

Table A.1: Congressional Floor Speech Length and Rule Changes on the Filibuster (Unlogged)

Table A.2: Congressional Floor Speech Length and Rule Changes on the Filibuster (Majority Party)

Table A.3: Congressional Floor Speech Length and Rule Changes on the Filibuster (Minority Party)

Table A.4: Congressional Floor Speech Length and Rule Changes on the Filibuster (Democratic Party)

Table A.5: Congressional Floor Speech Length and Rule Changes on the Filibuster (Republican Party)

Table A.6: Discussion of Judicial Nominees and Elimination of the Filibuster in 2013 (Unlogged)

Table A.7: Legislative Discussion of Judicial Nominees in Appellate Courts

Table A.8: Legislative Discussion of all Obama’s Judicial Nominees (Failed Nominees Included)

Table A.9: Placebo Test of Legislative Discussion of Judicial Nominees

Figure A.1: Number of Cloture Motions Filed over Time (1917-2020)

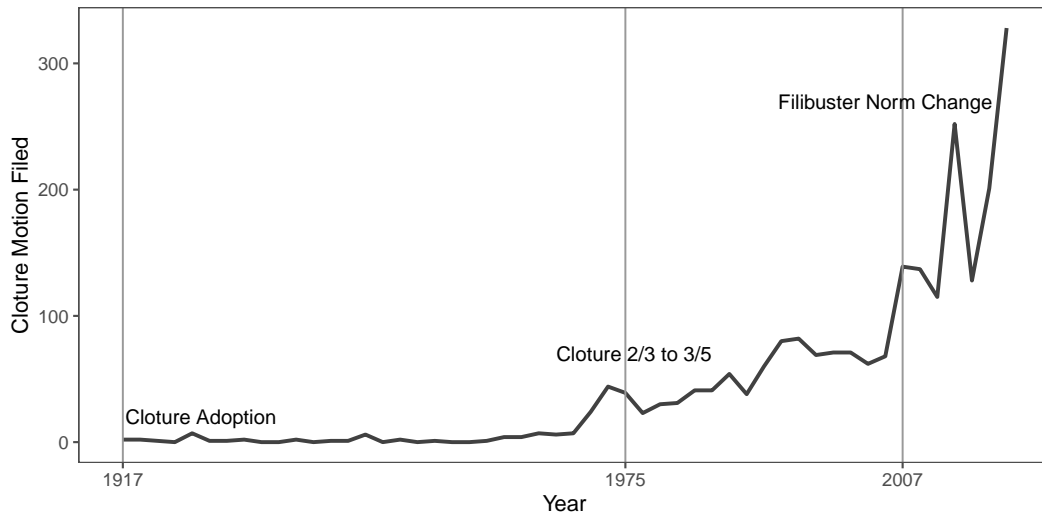
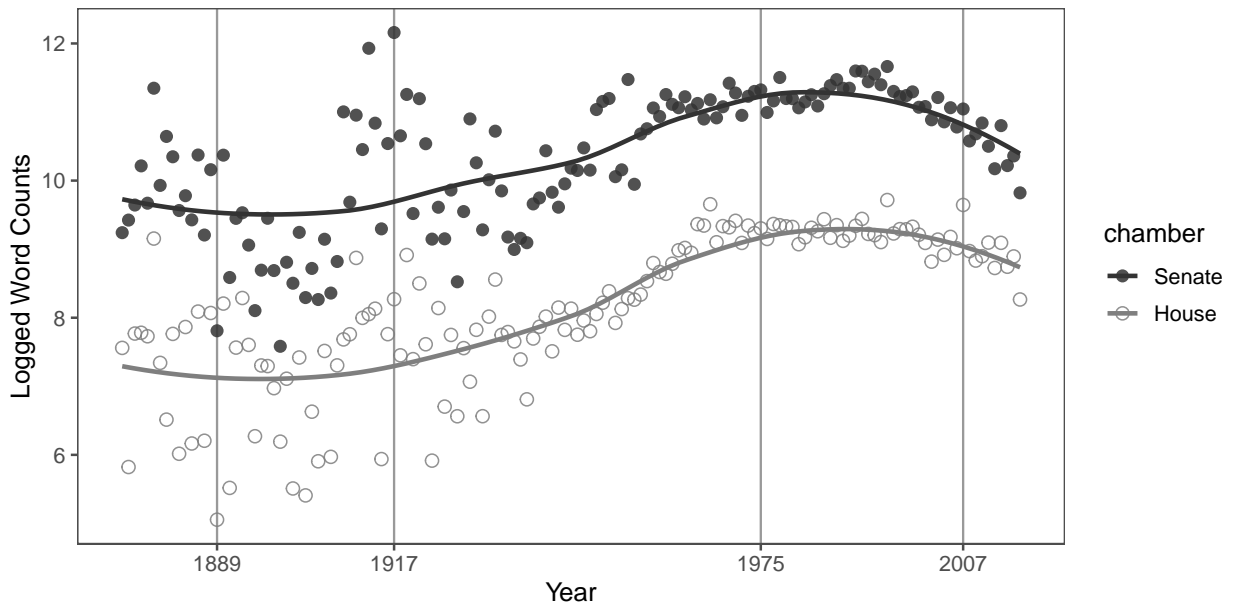


Figure A.2: Average Logged Number of Words Spoken on the Floor per Legislator per Year



Note: This figure accounts for the changing number of seats in both chambers over the years. Each dot is the yearly sum of logged word counts divided by the number of seats in each chamber. The fit line is drawn by the non-parametric LOESS.

**Table A.1: Congressional Floor Speech Length and Rule Changes on the Filibuster
(Unlogged Dependent Variable)**

Cloture Adoption in 1917					
Dependent Variable: Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Adoption	-11,035 (8,819)	-8,376* (3,798)	-1,099 (6,085)	-2,002 (5,956)	-2,312 (5,708)
Observations	2,473	5,206	7,835	10,126	12,253
R ²	0.749	0.626	0.612	0.594	0.592
Cloture Reduction in 1975					
Dependent Variable: Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Reduction	-939** (209)	4,577 (3,592)	9,906 (6,510)	12,965* (6,058)	14,178* (5,651)
Observations	2,126	4,261	6,478	8,608	10,745
R ²	0.875	0.828	0.712	0.716	0.715
Norm Change in 2007 to Use Filibuster More Expansively					
Dependent Variable: Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Norm Change	-524** (166)	-13,827 (7,141)	-18,146** (6,122)	-17,481** (5,419)	-16,391** (5,104)
Observations	2,144	4,279	6,535	8,675	10,810
R ²	0.863	0.789	0.785	0.704	0.709
House Disappearing Quorum Eliminated in 1889, 1893					
Dependent Variable: Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Eliminated in House	6,244 (4,438)	3,308 (6,036)	2,639 (2,773)	4,342 (3,059)	4,004 (2,787)
Observations	1,650	3,293	5,311	7,053	9,150
R ²	0.773	0.667	0.659	0.615	0.610

Note:

*p<0.05; **p<0.01.

All models include legislator and year fixed effects.

Robust standard errors clustered by chamber of each session.

**Table A.2: Congressional Floor Speech Length and Rule Changes on the Filibuster
(Majority Party Only)**

Cloture Adoption in 1917					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Adoption	0.048 (0.283)	0.070 (0.462)	0.229 (0.351)	-0.0002 (0.344)	-0.034 (0.310)
Observations	1,337	2,991	4,646	5,897	7,120
R ²	0.729	0.655	0.641	0.628	0.627
Cloture Reduction in 1975					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Reduction	-0.008 (0.011)	-0.038 (0.066)	0.046 (0.275)	0.086 (0.220)	0.121 (0.188)
Observations	1,300	2,627	3,956	5,163	6,536
R ²	0.882	0.830	0.721	0.728	0.728
Norm Change for Use Filibuster More Expansively in 2007					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Norm Change			-0.515** (0.114)	-0.574 (0.353)	-0.357 (0.266)
Observations			3,547	4,684	5,855
R ²			0.816	0.742	0.743
House Disappearing Quorum Eliminated in 1889, 1893					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Eliminated in House	0.843 (0.984)	1.561 (1.426)	0.765 (0.439)	0.803 (0.423)	0.830 (0.351)
Observations	878	1,909	3,158	4,225	5,458
R ²	0.857	0.721	0.689	0.670	0.657

Note:

*p<0.05; **p<0.01.

All models include legislator and year fixed effects.

Robust standard errors clustered by chamber of each session.

Table A.3: Congressional Floor Speech Length and Rule Changes on the Filibuster (Minority Party Only)

Cloture Adoption in 1917					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Adoption	0.230 (0.293)	-0.052 (0.655)	0.116 (0.520)	0.053 (0.454)	0.031 (0.421)
Observations	1,136	2,215	3,189	4,229	5,133
R ²	0.774	0.724	0.697	0.664	0.648
Cloture Reduction in 1975					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Reduction	-0.051 (0.064)	-0.237 (0.147)	-0.085 (0.235)	-0.089 (0.199)	-0.038 (0.179)
Observations	826	1,634	2,522	3,445	4,209
R ²	0.867	0.833	0.703	0.715	0.714
Norm Change for Use Filibuster More Expansively in 2007					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Norm Change			-0.367** (0.063)	-0.219 (0.461)	-0.127 (0.283)
Observations			2,988	3,991	4,955
R ²			0.842	0.745	0.746
House Disappearing Quorum Eliminated in 1889, 1893					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Eliminated in House	1.070 (1.277)	1.205 (1.396)	0.802 (0.589)	0.692 (0.541)	0.638 (0.474)
Observations	772	1,384	2,153	2,828	3,692
R ²	0.838	0.713	0.716	0.662	0.665

Note:

*p<0.05; **p<0.01.

All models include legislator and year fixed effects.

Robust standard errors clustered by chamber of each session.

**Table A.4: Congressional Floor Speech Length and Rule Changes on the Filibuster
(Democratic Party Only)**

Cloture Adoption in 1917					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Adoption	0.060 (0.283)	0.067 (0.446)	0.163 (0.333)	0.144 (0.315)	0.069 (0.297)
Observations	1,337	2,991	4,646	5,897	7,120
R ²	0.729	0.655	0.641	0.628	0.627
Cloture Reduction in 1975					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Reduction	0.001 (0.011)	-0.033 (0.068)	0.054 (0.277)	0.061 (0.224)	0.025 (0.197)
Observations	1,300	2,627	3,956	5,163	6,536
R ²	0.882	0.830	0.721	0.728	0.728
Norm Change for Use Filibuster More Expansively in 2007					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Norm Change	-0.167** (0.010)	-0.252** (0.046)	-0.314** (0.054)	-0.279 (0.187)	-0.249 (0.168)
Observations	1,064	2,192	3,270	4,291	5,255
R ²	0.884	0.802	0.795	0.702	0.706
House Disappearing Quorum Eliminated in 1889, 1893					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Eliminated in House	-0.450 (0.709)	0.241 (0.855)	0.356 (0.365)	0.454 (0.344)	0.428 (0.325)
Observations	803	1,761	2,924	3,599	4,541
R ²	0.745	0.651	0.638	0.580	0.587

Note:

*p<0.05; **p<0.01.

All models include legislator and year fixed effects.

Robust standard errors clustered by chamber of each session.

Table A.5: Congressional Floor Speech Length and Rule Changes on the Filibuster (Republican Party Only)

Cloture Adoption in 1917					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Adoption	0.230 (0.293)	-0.175 (0.661)	-0.180 (0.507)	-0.273 (0.460)	-0.272 (0.405)
Observations	1,136	2,347	3,784	5,023	6,228
R ²	0.774	0.650	0.636	0.620	0.619
Cloture Reduction in 1975					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Cloture Reduction	-0.051 (0.064)	-0.237 (0.147)	-0.085 (0.235)	-0.026 (0.213)	0.021 (0.193)
Observations	826	1,634	2,522	3,460	4,242
R ²	0.867	0.833	0.703	0.711	0.716
Norm Change for Use Filibuster More Expansively in 2007					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Norm Change	-0.124** (0.011)	-0.179 (0.094)	-0.259** (0.090)	-0.188 (0.156)	-0.168 (0.138)
Observations	1,072	2,071	3,238	4,349	5,514
R ²	0.844	0.785	0.780	0.712	0.717
House Disappearing Quorum Eliminated in 1889, 1893					
Dependent Variable: Log Word Counts					
	1 session (1)	2 sessions (2)	3 sessions (3)	4 sessions (4)	5 sessions (5)
Filibuster Eliminated in House	-0.131 (0.764)	0.293 (0.899)	0.354 (0.494)	0.466 (0.474)	0.418 (0.417)
Observations	836	1,500	2,290	3,301	4,326
R ²	0.802	0.686	0.685	0.653	0.634

Note:

*p<0.05; **p<0.01.

All models include legislator and year fixed effects.

Robust standard errors clustered by chamber of each session.

**Table A.6: Discussion of Judicial Nominees and Elimination of the Filibuster in 2013
(Unlogged Dependent Variable)**

	Dependent Variable: Word Counts		
	All Courts (1)	Appellate Courts (2)	District Courts (3)
Elimination of Filibuster	-5.669 (3.176)	0.968 (10.848)	-6.870 (3.609)
District Courts	-38.267** (8.694)		
Senator FE	✓	✓	✓
Unique Senator	155	155	155
Unique Nominee	323	55	268
Observations	50,065	8,525	41,540
R ²	0.301	0.332	0.307

Note: *p<0.05; **p<0.01.
Robust standard errors clustered by each session.

Table A.7: Legislative Discussion of Judicial Nominees in Appellate Courts

	Dependent variable: Log Word Counts	
	Appellate Courts (1)	Appellate Courts (Three Nominees Excluded) (2)
Elimination of Filibuster	0.060** (0.018)	0.014 (0.010)
Senator FE	✓	✓
Unique Senator	155	155
Unique Nominee	55	52
Observations	8,525	8,060
R ²	0.332	0.359

Note: *p<0.05; **p<0.01.
Robust standard error clustered by each session.

**Table A.8: Legislative Discussion of all Obama’s Judicial Nominees
(Failed Nominees Included)**

	Dependent Variable: Log Word Counts		
	All Courts (1)	Appellate Courts (2)	District Courts (3)
Elimination of Filibuster	-0.029 (0.023)	0.018 (0.071)	-0.038* (0.018)
District Courts	-0.062* (0.029)		
Senator FE	✓	✓	✓
Unique Senator	155	155	155
Unique Nominee	380	68	312
Observations	59,055	10,540	48,515
R ²	0.259	0.270	0.267

Note: *p<0.05; **p<0.01.
Robust standard errors clustered by each session.

**Table A.9: Placebo Test of Legislative Discussion of Judicial Nominees
(Suppose a Filibuster Rule Change in Nov 21, 2005)**

	Dependent Variable: Log Word Counts		
	All Courts (1)	Appellate Courts (2)	District Courts (3)
Elimination of Filibuster	-0.041 (0.039)	-0.165 (0.192)	-0.013 (0.008)
District Courts	-0.278** (0.130)		
Senator FE	✓	✓	✓
Unique Senator	153	153	153
Unique Nominee	322	61	261
Observations	49,266	9,333	39,933
R ²	0.180	0.222	0.210

Note: *p<0.05; **p<0.01.
Robust standard errors clustered by each session.