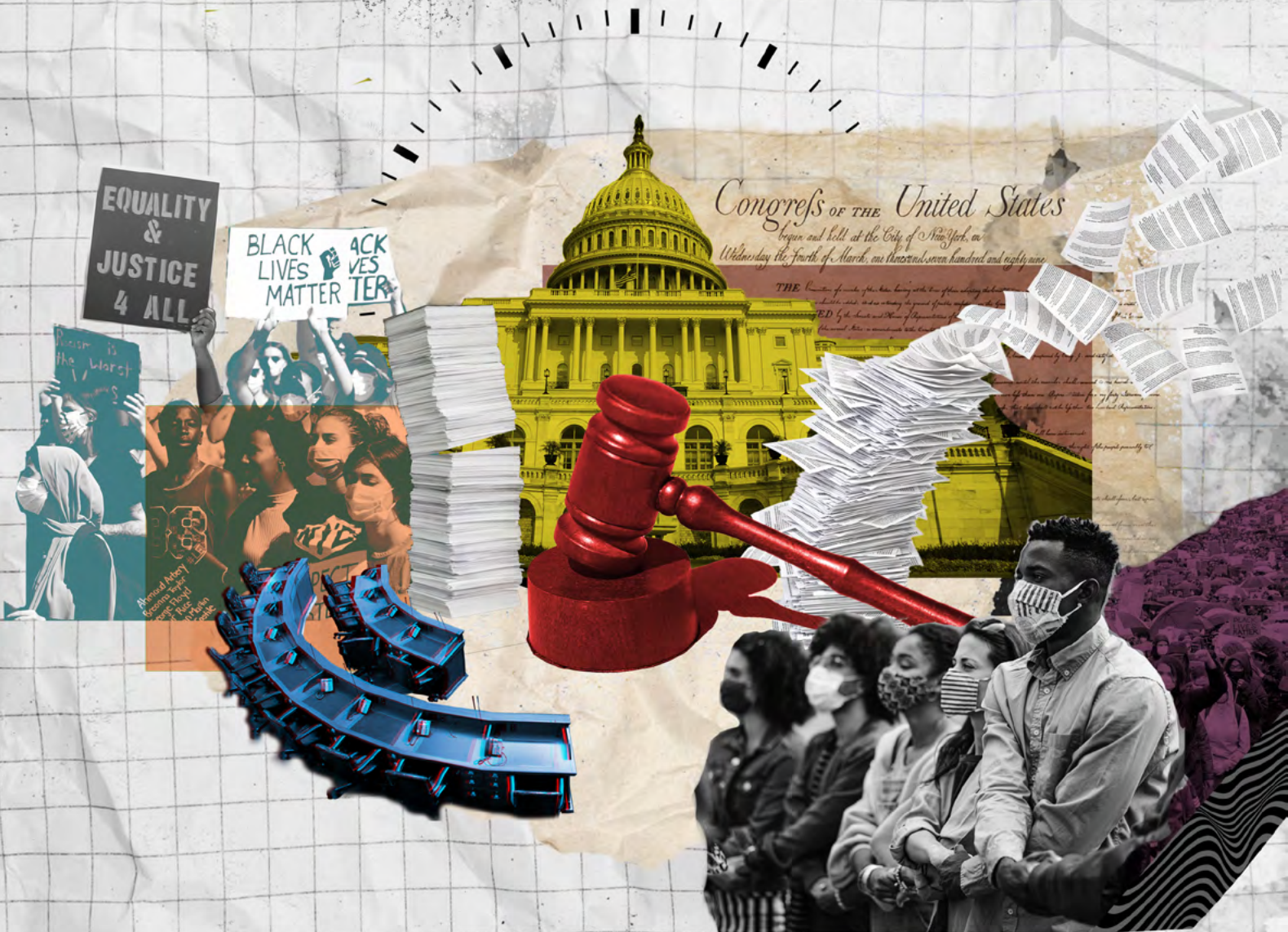


END THE FILIBUSTER:

HOW A RELIC OF JIM CROW COULD BLOCK OUR PROGRESSIVE AGENDA



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Introduction

Imagine this: you and your team have played nearly 40 official games, clocked somewhere between 1400 to 1600 minutes of refereed ball time, and countless hours of practice. At the sound of the buzzer of the championship game in the NCAA tournament, your team is ahead by 1 point. Victory is yours! Your entire collegiate career for the last 4 years has led you to earning this moment. You are the official winner of the NCAA title. BUT—and this is a huge but—by some obscure rule that is a relic of days gone by used to help smaller schools make it to March Madness, the governing body of the NCAA announces that you and your teammates cannot walk away with the trophy because unfortunately winning by 1 point is insufficient; you needed to win by 10.

If you are an athlete, a sports fanatic, or simply a person with a moral compass, a ruling like this confuses you, to say the least. Well, unfortunately, there's more fairness and justice in college sports than there is in American politics. Despite Democrats winning the U.S. Senate after Black and Brown voters delivered first the presidency and then Georgia,¹ Republicans are relying on an antiquated and convoluted rule—the filibuster—to deny the majority party the right to govern over the next 2 years. They demand Democrats should have won by 10 votes (a supermajority of 60) as opposed to 1 vote (a majority of 51) in order to advance legislation in the Senate.

And Black and Brown Americans, as always, are bearing the brunt of this distortion in our democracy. The filibuster is a racist remnant of a Senate designed to entrench white minority rule. It actively stifles the legislative process, and throughout history has been used to protect racial terror, like lynchings, and prevent progress on civil rights legislation and other issues Black and Brown communities care about. In obstructing legislation that would advance racial and economic justice, the filibuster also undermines organizing, democratic participation, and electoral victories fueled by Black and Brown communities.

This brief breaks down what the filibuster is, examines its roots in white supremacy, and explains how, unless we get rid of it, the filibuster will continue to thwart progress on the issues our communities care most about.

What is the Filibuster?

What is the filibuster, anyway, besides a mouthful?

In short, the filibuster is a procedural tool that senators use to delay or block action on a bill they do not like. Under the rules of a democracy, the support of a majority, or 50 percent plus 1, is enough to win. These are also the ostensible rules of our Senate: when a bill comes to a vote, 51 senators voting together in support of the bill means it should pass.

However, in today's Senate, the filibuster works by requiring that a supermajority, or 60, senators vote to end debate on a bill and allow it to be voted on. This supermajority requirement for moving to a vote effectively raises the threshold for passage of a bill to a supermajority, as well. The filibuster undermines majority rule and defies democracy by allowing a minority of 41 senators to block a bill from ever receiving a vote.

When many people think of the filibuster, they think of what's called the "talking filibuster," through which a senator would stand in front of the Senate and talk without taking a break, in hopes of delaying or blocking action on a bill. But this image of the filibuster is a thing of the past. In today's Senate, a bill can be filibustered without a single senator sharing a word of opposition to the substance of the bill. All they have to do is send an email saying they object to the bill, and the filibuster is invoked, raising the threshold to end debate, and therefore for successful passage of the bill, to 60 votes.²

The filibuster acts as a blockade to democracy. In the hands of Republican senators, it has been used as a means to not legislate, leaving countless bills to die in committee instead of being voted upon by the full Senate.

Thanks to the filibuster, many of the widely popular proposals that Americans want to see Congress enact have to get support from 60 senators, or the proposals will die in the Senate. From comprehensive and equitable COVID relief, to strengthening our democracy, to addressing the existential threat of climate change, there are already proposals in Congress that would advance racial equity by addressing political and economic injustice head-on—and they are popular with the American people.³ But conventional wisdom is that these proposals are dead on arrival in today's Senate. That's because the filibuster, long a favored tool of white supremacists, gives a minority of overwhelmingly white senators veto power over the majority and, in many cases, over a bipartisan majority of Americans who support action from Congress on the most pressing issues of our time.



The History of the Filibuster

The filibuster is a racist tool of white supremacy that has been weaponized against Black and Brown people from its inception. The term itself originates in white Colonial exploitation. Translated from Dutch (*vrijueter*—freebooter/pirate), to Spanish (*filibustero*), French (*fribustier*), to English, it points to the practice of sea mercenaries ambushing weakened governments in the quest for “New World” expansionism.⁴ Its heritage of white supremacist power-grabbing has driven the work of the filibuster in the Senate throughout history and still today. Early on, the filibuster was used largely to preserve slavery, and after the Civil War, to support lynching, segregation, and voter suppression. Across nearly 200 years, the filibuster has been used primarily to block progress on civil rights and other social and economic justice legislation that Black and Brown communities have fought for.⁵

“[F]rom its inception to today, the filibuster has mainly served to empower a minority of predominantly white conservatives to override our democratic system when they found themselves outnumbered, blocking progress that threatened their power, their way of life, and the priorities of their wealthy benefactors, from the slaveholders of the nineteenth century to the conservative billionaires of today.”⁶

—Adam Jentleson, *Kill Switch*

The filibuster was *not* part of our country's founding documents or principles, as its defenders would like us to believe. According to one filibuster scholar, "the Framers would have abhorred the filibuster" because it allows a minority of senators to subvert the will of the majority and, in so doing, to subvert democracy.⁷ Another points out the filibuster was "created by mistake."⁸ In fact, the filibuster as we know it was innovated in 1841 by John C. Calhoun—the white South Carolina senator who infamously defended slavery as "a positive good"⁹—after a clean-up of the senate rule book inadvertently eliminated the mechanism to end debate and move to an actual vote.¹⁰ It was refined and carried forward by another white Southern senator who dedicated his life to the preservation of white supremacy: Richard Russell. Hailing from Georgia, Russell believed "any southern white man worth a pinch of salt would give his all to maintain white supremacy,"¹¹ and he gave his all to thwarting civil rights with the filibuster. Today, the filibuster has become the Senate's key tool for obstructionism, or minority veto power, under another son of the South: Mitch McConnell.





The Filibuster as a Tool to Protect Slavery

The filibuster as a means of blocking legislation came about in the mid-19th century. In 1841, senators of slave-holding states, led by Calhoun, organized one of the first “talking” filibusters to block a bank bill they believed would centralize federal power and erode the power of Southern slave states relative to the North. They held the floor, making speech after speech, delaying action on the bill for weeks. While the bank bill eventually passed, the idea of weaponizing senate rules to thwart the will of the majority was born.¹²

Southern senators continued to employ and refine the filibuster over the following years to stall votes on anything they perceived as a threat to their white supremacist interests. As just a few examples, they filibustered an 1848 bill to organize the territorial government in Oregon because it outlawed slavery, and 1850 and 1857 bills seeking to admit California and Kansas to the union as free states.¹³

Upholding Jim Crow: Anti-Lynching and Anti-Poll Tax Bills

During the brief but transformative period of Reconstruction that followed the Civil War, Black Americans built unprecedented political power in state legislatures and Congress.¹⁴ Almost immediately, Southern senators turned their obstructionist sights to blocking Black Americans from exerting governing power. State lawmakers across the South created a set of violent voter intimidation and suppression schemes to keep Black men from exercising their fundamental right to vote—and Southern senators in Washington, D.C. used the filibuster to ensure Jim Crow endured as the law of the land in the South.¹⁵

For example, after Reconstruction, the filibuster was used for nearly 75 years to enshrine Jim Crow practices, particularly by blocking anti-lynching and anti-poll tax legislation. Jim Crow was nothing less than a legal and social means to intimidate, disenfranchise, and kill Black Americans with impunity, and lynchings and disenfranchisement of Black Americans were integral to that strategy.

The first anti-lynching bill in Congress was introduced in 1900 by Congressman George Henry White of North Carolina, then the country's only Black member of Congress.¹⁶ In 1922, Congressman Leonidas Dyer of Missouri built on White's leadership, presenting what could have been the first successful anti-lynching bill. Worked on and supported by the NAACP, the robust legislation called for fines upwards of \$10,000 to the county where a lynching occurred, federal prosecution of the state and county officials who were negligent in seeking justice, as well as federal murder charges for participants in a lynching.¹⁷ In a 1921 public address in Birmingham, Alabama, Warren G. Harding became the first sitting president to formally speak out against lynching and advocate for Black American civil rights.¹⁸

The bill passed the House, only to die in the Senate at the hands of the filibuster. Subsequent anti-lynching bills met similar fates in 1937 and again in 1940.¹⁹ The consequences were not theoretical: as the filibuster blocked efforts to end this form of racial terror, more than 4,400 Black Americans lost their lives to lynching.²⁰

There were similar efforts in Congress to address another hallmark of Jim Crow: poll taxes. Poll taxes targeted Black Americans, ensuring the same communities who had been disenfranchised by economic exploitation and extraction for centuries²¹ were also disenfranchised at the ballot box. While the 15th and 19th Amendments granted federal access to vote to Black men and women, respectively, by the 1940s, 8 Southern states still required a fee to cast a ballot.²² Such a fee disenfranchised Black populations, but some poor whites felt the institutional impacts of voter suppres-

sion as well, giving way to a unifying organizing tool for political strategists in the 1940s.²³ As a battle against the racism and classism of Southern white elites, anti-poll tax legislation became a unifying goal for a number of organizations that included President Roosevelt's New Deal Coalition, the NAACP, the Southern Conference for Human Welfare, and the National Committee to Abolish the Poll Tax. In response to this organizing and coalition-building, Congress took up bills to abolish poll taxes early in the Civil Rights Movement, with the House of Representatives passing anti-poll tax bills for 5 consecutive Congresses between 1941-1951, mostly by wide margins.²⁴ Just like the anti-lynching bills, however, these efforts were killed in the Senate by, you guessed it, the filibuster.²⁵

Not only did anti-lynching and anti-poll tax legislation have majority support in Congress and presidents ready to sign them, they also had broad support among Americans. During the 1937 push to outlaw lynching, 72 percent of Americans supported federal legislation on the issue.²⁶ In 1941, 63 percent of Americans supported anti-poll tax laws.²⁷ Despite majority support in Congress and among the American people for these bills aimed at saving lives and promoting political equality, the filibuster kept them from passing for decades. To this day, Congress has not passed federal anti-lynching legislation.²⁸



The Struggle to Pass the Civil Rights Act

Opponents to full integration, enfranchisement and justice for Black Americans persisted using the filibuster as a major legislative tool to protect white supremacy. In 1957, Senator Strom Thurmond staged the longest talking filibuster in history, spending 24 hours and 18 minutes on the floor railing against the Civil Rights Act of 1957.²⁹ The bill eventually passed and was a step forward, but not before it was gutted of some of its most important enforcement mechanisms. According to one voting rights scholar, after Southern senators were through with the Civil Rights Act of 1957, “it had few teeth and little impact.”³⁰

In 1964, another, stronger Civil Rights Act arrived in the Senate. Southern senators again reached for their favorite procedural tool of white supremacy, waging a multi-month filibuster assault on the bill.³¹ This time, though, the pressure built by decades of sustained organizing and sacrifice by Black communities—which continued to demonstrate the urgent need for, and the consequences of not having, a Civil Rights Act with teeth³²—allowed the bill’s champions to do what they had been unable to do for nearly three-quarters of a century. On June 19, the Senate broke the Southern filibuster and passed the Civil Rights Act of 1964, and on July 2, President Lyndon Johnson signed it into law. Among other things, the law empowered the Justice Department to enforce desegregation and created the Equal Employment Opportunity Commission to address racial discrimination in the workplace.³³ The Civil Rights Act of 1964 remains one of our nation’s most significant legislative achievements and an important protector of the rights of Black and other minoritized Americans.

While the Black-led Civil Rights Movement finally succeeded in breaking the filibusters’ stranglehold on civil rights legislation, the filibuster has not gone away. Quite the opposite, in fact—the filibuster is alive and well, and it continues to thwart progress on issues of social, racial, and economic justice to this day.

The Filibuster Continues to Block Racial Justice to this Day

As the filibuster continues to block legislation aimed at helping Americans, it is Black and Brown Americans who bear the brunt of delayed and denied progress. Bills aimed at addressing deep and sustained inequalities within our society have failed to move, highlighting the immediate need for rules reform. The only way for the 117th Congress to truly center Black people and other people of color and address the sustained inequities in our society is to end the obstruction of the filibuster—which it can do if a simple majority finds the political will—and pass meaningful and long overdue legislation.

Voting Rights

In 2013, the Supreme Court struck down a critical provision of the Voting Rights Act, opening the door for states to pass laws that create barriers to voting.³⁴ Since the Supreme Court's decision, numerous pieces of legislation have been introduced to restore the Voting Rights Act and protect the right to vote, particularly for people of color. Black voters are 4 times more likely to experience discrimination when trying to vote than white voters.³⁵ And the disenfranchisement of those with prior felony convictions keeps 5.2 million Americans from being able to participate in elections.³⁶ Because of our racist legal system, Black and Brown people are arrested and convicted at higher rates and receive harsher sentences than white people for the same crimes,³⁷ meaning the majority of those barred from voting are people of color. Additional barriers such as voter identification laws target Black and Brown voters, who are less likely to have qualifying identification, keeping them from participating in elections.³⁸

Bills such as H.R. 4, the John Lewis Voting Rights Advancement Act, are likely to pass out of the House of Representatives but still face an uphill battle in the Senate. Despite participation in elections being touted as a fundamental right, the filibuster poses a significant hurdle to restoring and securing that right for all Americans. In January 2021, Congress re-introduced the For The People Act (H.R. 1 / S.1)—a democracy reform package that would, among other things, create automatic voter registration across the country, restore the right to vote for those who have completed their felony sentences, and expand voting access overall.³⁹ While the policies in H.R. 1 enjoy bipartisan support among voters,⁴⁰ the filibuster could still block this bill from becoming law, leaving millions of voters vulnerable and disenfranchised. Allowing the filibuster to block access to voting would be a continuation of the rule's racist history.

D.C. Statehood

The people of Washington, D.C., a majority of whom are Black and Brown,⁴¹ have been disenfranchised for centuries. Over the past 30 years, the issue of statehood for Washington, D.C. has been put before Congress multiple times, championed by House Delegate Eleanor Holmes Norton. In June 2020, in the midst of the nationwide uprisings for Black lives, H.R. 51—the bill to make Washington, D.C. a state—passed the House of Representatives with historic and overwhelming support.⁴² It was the first time in history D.C. statehood had passed either house of Congress. But once again, because the bill lacked the 60 votes needed to overcome the filibuster, statehood died in the Senate. As a result, D.C. still lacks the representation and autonomy Americans in the states enjoy, including the power to protect and defend its residents in the face of deadly attacks like the January 6th, 2021 white supremacist insurrection at the Capitol.⁴³

Although Washington, D.C. has more residents than Vermont or Wyoming,⁴⁴ pays more federal taxes per capita than any state,⁴⁵ and runs its own local government, Congress has full authority over nearly every aspect of how the District operates⁴⁶—all while D.C. residents have no one in Congress to vote on their behalf. The fight for full rights for the people of Washington, D.C. is not new. Washingtonians have been fighting for statehood for a very long time, harkening back to the fight for full rights after the Civil War through the Civil Rights Movement. Today the fight is carried forward by bold and creative Black leaders, most of them young.⁴⁷ But these leaders and all Washingtonians face a familiar roadblock, which in this case is denying more than 700,000 mostly Black and Brown people representation in Congress: the filibuster. The filibuster must be changed to ensure equal rights under the law for residents of our capital city.



Gun Violence Prevention and Reform

Gun reform that includes universal background checks is an issue that a majority of Americans—over 64 percent⁴⁸—support and want to see addressed. Despite this overwhelming bipartisan support, attempts to pass laws aimed at curbing gun violence have failed because bills haven't reached the 60-vote threshold. In 2013, following the Sandy Hook massacre in which over 20 kindergarten children were killed, Senators Joe Manchin (D–WV) and Pat Toomey (R–PA) introduced a bill to require background checks for all gun purchases. Despite bipartisan support in the Senate and overwhelming support from a majority of Americans, the bill was filibustered and failed.⁴⁹ The legislation was introduced again in 2015 after the San Bernardino killings but met the same fate—no vote was called in the Senate to record if senators had changed their stance.⁵⁰

Firearms are the leading cause of death for children and teens in America, and Black Americans are disproportionately harmed by gun violence.⁵¹ Black Americans experience 10 times the gun homicides, 15 times the gun assaults, and 3 times the fatal police shootings as white Americans.⁵² In large cities, Black Americans make up 70 percent of gun homicides, and Black children and teens are 14 times more likely to die by gun violence than white children and teens.⁵³ Gun violence in the Black community is an epidemic. Because of the 60-vote threshold for passing meaningful gun reform, Black people are dying at greater rates than white Americans every day. The real-life consequences of the filibuster are too high to justify its continued use.

Health Care

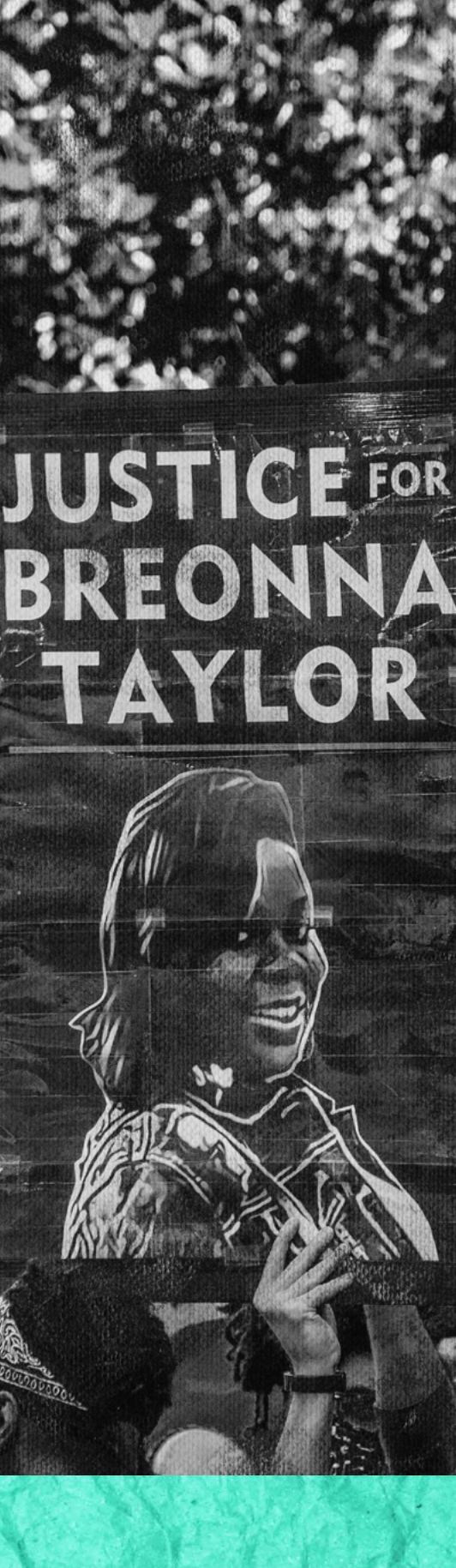
Since the Affordable Care Act (ACA) was passed in 2010, Democrats and progressive organizations have worked to protect the law and people's access to quality and affordable health care. The ACA made great strides in helping millions of people access health insurance, but there is still much work to be done—work that could be stalled because of the filibuster. Without improvements to our health care system, millions of people—particularly Black women—will continue to face major disparities in coverage and care.

The United States is the only developed country in the world where maternal mortality rates are rising; Black women are 3 to 4 times more likely to die in childbirth than white women,⁵⁴ and Black infants are twice as likely to die as white infants.⁵⁵ The COVID-19 pandemic has shone another harsh light on health care disparities in the United States: Black people have made up 44 percent of COVID hospitalizations⁵⁶ and 34 percent of COVID related deaths,⁵⁷ despite only making up 13 percent of COVID positive tests⁵⁸ and 12 percent of the population.⁵⁹ From Black maternal health to COVID-19 disparities and everything in between, health care reform must be a priority for the 117th Congress, and abiding by an arcane rule such as the filibuster should not be a good enough reason to allow these life-and-death inequities to continue.

Criminal Justice Reform

Over the summer of 2020, the inequality and discrimination faced by Black and Brown people at the hands of the criminal justice system and the critical need for reform took center stage once again. Numerous attempts to pass bills like the National Criminal Justice Commission Act to address the systemic racism in our criminal justice system have not moved because of the filibuster. Meanwhile, Black and Brown people continue to experience disproportionate harm. Black people are more than 3 times as likely to be killed during an interaction with police than white people.⁶⁰ Black men are incarcerated at 6 times the rate of white men; and 1 in 3 Black men will be incarcerated in their lifetime.⁶¹ Children are not immune from this discrimination either: Black students face higher rates of suspension and expulsion than their white peers, leading to lifelong consequences and greater disparities in access to education.⁶²

Bills like the George Floyd Justice in Policing Act⁶³ would take meaningful steps toward addressing these life-threatening inequalities, and we shouldn't allow the filibuster to stall this progress. Reforming policing standards and sentencing guidelines and diversifying the judicial branch are just some of the steps that must be taken to confront the inequities of our criminal justice system. The treatment of Black and Brown people in our criminal justice system has real-life consequences, and the disparities must be addressed and not held up by Senate procedural hurdles like the filibuster.



The Racial and Gender Wage Gap and Raising the Minimum Wage

While steps have been taken to address the disparity in pay between women and men, bills with bipartisan support like the Paycheck Fairness Act—which would make it easier for women to raise claims of pay discrimination—have failed to move because of partisan obstruction,⁶⁴ and attempts to raise the minimum wage have failed because of the filibuster. While women overall earn 82 cents to every one dollar earned by non-Hispanic white men, Black women earn just 62 cents for every dollar paid to white non-Hispanic white men, resulting in over \$23,000 lost in wages for each Black woman each year.⁶⁵ If the wage gap were eliminated, Black women would be able to afford 2.5 years of child care, 3 years' worth of food and groceries, and over 20 months of rent.⁶⁶ Closing the gender wage gap would allow Black women and women of color to more fully participate in our economy and reach a place of equity.

Relatedly, calls for increasing the minimum wage for workers have been echoed for decades. Fifty-eight years ago, the March on Washington's racial justice platform included expanding and increasing the minimum wage, and we are still fighting for that realization.⁶⁷ The United States has not raised the federal minimum wage since 2009—the longest time period without an increase in recent history.⁶⁸ Because Black workers and other workers of color are overrepresented in low-wage jobs, raising the minimum wage is a racial equity issue. Increasing the wage for the lowest-paid workers would mean that nearly 40 percent of Black workers would see an increase in wages, compared to 23 percent of white workers.⁶⁹ Senate Republicans have blocked bills designed to raise the minimum wage over and over again using the filibuster, inflicting further harm on communities of color. By removing the filibuster, Congress could pass a higher minimum wage and provide much needed and long overdue economic support for millions of workers.

Immigration Reform

Immigration reform has long been a goal for Democrats and progressives, with the DREAM Act top of mind for the last decade. Originally introduced in 2001, the bill has been re-introduced in some form 5 times over 20 years. In 2010, when Democrats controlled Congress and the White House (as they do now), the DREAM Act passed the House and was sent to the Senate where it had bipartisan support. But because the bill didn't have the 60 votes necessary to pass,⁷⁰ more than 10 years later we are still fighting to protect over 2 million DREAMers and pass a bill that 74 percent of Americans support.⁷¹ As immigrants, their allies, and members of Congress continue to push for comprehensive immigration reform to provide legal status and a path to citizenship for millions of undocumented immigrants, the filibuster still stands in the way of making those protections a reality.

Climate Change

Despite multiple attempts and a mounting urgency, in the last decade, the Senate has failed to pass any meaningful legislation to address the growing threats of climate change. Bills such as the American Clean Energy and Security Act of 2009⁷² and the Green New Deal⁷³ have failed to get the 60 votes required to pass out of the Senate. And the lack of action on climate change has major implications for Black Americans and communities.

Because of years of redlining and segregationist policies, Black and Brown people have been constrained to neighborhoods that have greater exposure to pollution than primarily white neighborhoods.⁷⁴ Black and Brown people feel the impacts of a changing climate in a multitude of ways. Flint, Michigan, where over 50 percent of the residents are Black,⁷⁵ has been without clean water since 2014. As hurricanes become more intense and destructive, cities and communities with majority Black populations are overwhelmingly impacted by displacement and the loss of their homes. People in majority-Black and Brown cities like Chicago, Memphis, Detroit, and Kansas City are facing chronic illnesses and death as a result of long-term exposure to toxins.⁷⁶ The link between climate justice and racial justice is clear and must be addressed—and the only way forward is without the filibuster.

Conclusion

Time's up for playing any more games with the Senate and the filibuster. In basketball, the 24-second shot clock was added as a mechanism to force teams to shoot and engage in lively competition. In describing the need for the clock, one commentator declared that, “[b]y the end of the 1953-54 season, a plague was infesting the N.B.A. Slow, boring, foul-riddled, low-scoring games became commonplace as teams sat on the ball.”⁷⁷ No one today wants to sit through such inactivity. Yet, as things stand with the Senate, an enormous amount of legislation never has to be considered and voted on.

Why? The filibuster. Session after session, Americans pay U.S. Senators to show up to work and rarely vote. In 2020, out of more than 15,000 bills, only 1 percent were enacted into law, as hundreds of bills sat in the majority leader's control without ever being called for a vote.⁷⁸ Americans continue to demand action on voting rights, gun violence prevention, health care expansion, criminal justice reform, economic justice, immigration, and climate justice, but with the filibuster in place, we get nothing. We don't even get the opportunity to know on the record where our elected senators stand on these issues because a superminority continues to dodge the question. The stakes are too high. Black and Brown communities are suffering and even dying, while life-saving legislation literally sits on senators' desks, never to see the light of day.

As former President Obama pointed out in 2020, the filibuster is a “Jim Crow relic.” It is past time we cleanse our government—and our democracy—of every last dying breath of Jim Crow. The filibuster is one of these vestiges that have crippled the Senate, and, in turn, our government's ability to legislate. We must abolish the filibuster immediately so Congress can legislate on behalf of a majority of Americans in the service of a fully inclusive and representative democracy.



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Dēmos

Dēmos is an organization that powers the movement for a just, inclusive, multiracial democracy. Through cutting-edge policy research, inspiring litigation, and deep relationships with grassroots organizations, Dēmos champions solutions that will create a democracy and economy rooted in racial equity.

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Just Democracy is an intersectional coalition with racial justice at its core— uplifting voices from all walks of American life that are too often left out of the conversation. The coalition is made up of over 40 Black and Brown-led organizations working across issue areas. It mobilizes thousands who know that advancing social and racial justice issues first requires bold structural democracy reform.

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The Truth and Conciliation Commission is a grassroots movement calling for a federal commission to dismantle white supremacy. We are people of the United States of America ready to hear, speak and live the truth about systemic racism embedded in the land, laws, culture and every institution developed by our nation. We are committed to dismantling systemic racism and all forms of oppression in order to build an inclusive, diverse and equitable future for all our relations.

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