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**Congress of the United States
House of Representatives
Washington, DC 20515-4312**

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Dear Colleague:

I am grateful for the bipartisan House passage of the SAVE America Act and I look forward to its consideration in the Senate. Americans want us to deliver. They want the Senate to not just take the bill up, but to send it to the President so we can ensure only American citizens vote & implements common sense Voter ID requirement to cast a ballot.

But there is a lot of confusion about the process, Senate rules, the filibuster – calls to “nuke” it or not – and what the next steps are. Let’s clear that up!

SHORT ANSWER (CLIFF'S NOTES):

The commonly accepted 60-vote “filibuster” threshold to “shut off debate” is not the ONLY way to force a vote in the Senate – the majority can force opposing Senators to speak.

The Majority Leader (Thune) can proceed to the SAVE America Act with a simple majority vote (because we set it up that way in our House passed version) as soon as he chooses. Under current practice, he would call it up, debate it for a while, and proceed to a 60-vote cloture vote to “shut off debate.” It would fail, Republicans would shrug and say “we tried, we need to elect more Republicans.” This is what we call a “fake” or “zombie” filibuster. There’s no real speaking, just a failure to get 60 votes to “shut off debate” and then default to a “quorum call” (no business) rather than having 51 Senators show up to call the question at a simple majority.

BUT, existing Senate rules allow that if a majority (51) is present (a quorum), and seeks a vote on the SAVE America Act (or anything) – it will force a minority (mostly Democrats) to try to stop it by speaking on the floor (a real filibuster) until either side gives out. There is no need to change any Senate rules (“nuke the filibuster”) to do this. If Republicans stick together, and the minority exhaust their opportunities to speak in opposition or give up, a final vote on passage of the bill occurs automatically at a majority threshold.

LONG ANSWER:

1. **THE POWER OF A SENATOR:** The House of Representatives is majoritarian – while the Senate empowers each Senator to have a voice.
2. **HOW THE SENATE WORKS:** On the Senate floor, there are 3 things that can be happening at any moment: 1) Speaking, 2) Voting, or 3) Establishing a Quorum.

3. CURRENT RULES PROTECT BOTH VOTING & SPEAKING: Throughout history and under *current* Senate rules – if there is a quorum, the Senate must be voting (at 51, a simple majority) OR a member must be speaking. Those are the options. In other words, if no one is speaking and a quorum is present, the vote on the pending business happens automatically.
4. A REAL FILIBUSTER: The clash of voting vs. speaking is the “filibuster” - the embodiment of the power of a Senator (including *your* Senator) to speak indefinitely & be heard – and to use that speaking tool to delay the vote for as long as it takes to try win support and exhaust the majority or lose after exhausting your own side.
5. BREAKING THE FILIBUSTER: There are two ways to break a filibuster under current Senate rules:
 - a. The Senate invokes “cloture” to shut off debate with 60 votes and proceeds to a vote on the bill at 51 votes (50 plus VP tie-break).
 - b. The majority seeking passage acts with discipline and exhausts the objecting (filibustering) side by staying on one subject and voting to table EVERY amendment offered remembering that existing Senate rules limit Senators to two speeches on any given matter.
 - i. NOTE 1: The “filibustering” party can offer unlimited amendments, as they do during budget reconciliation. But Republicans can move to table each amendment (no debate if successful), and a roll call vote requires the presence of 20 senators for a sufficient second. So, if the majority is disciplined and tables each amendment while requiring Democrats to present a sufficient second every time, they will limit debate, limit actual voting, and exhaust the minority – as happens in each budget reconciliation process.
 - ii. NOTE 2: There would normally be two bites at the “filibuster” apple because there is a vote to proceed to a matter in the Senate, but the House strategically eliminated the “proceed” filibuster options by sending the SAVE America Act to the Senate as an amendment to a bill already passed by the Senate. In order to pass the SAVE America Act, the Senate only needs to overcome one filibuster, not two.
6. [NOT] “NUKING THE FILIBUSTER” – The Senate majority could – by majority vote, change or eliminate the current 60 vote legislative threshold to shut off debate (cloture). There are arguments for and against doing so – but it’s not necessary:
 - a. NOTE 1: Senate Democrats (Leader Harry Reid) infamously broke with tradition to do exactly this with respect to non-SCOTUS federal judges. Senate Republicans expanded this decision to SCOTUS, certain debate time, and confirming nominations in groups.
 - b. NOTE 2: Many Senate Democrats WANT to end the 60-vote threshold (so they can pack the Court or make DC a state, etc) and tried to “nuke the filibuster” for legislation but fell 2 votes short because Democrats Senators Manchin and Sinema refused to do it.
 - c. NOTE 3: Many Republicans believe Democrats will take this step next time they have the opportunity. Some Republicans think it's worth it to try to hold on to the 60-vote hurdle as the only legislative brakes on radical Democrats.

- d. NOTE 4: In the absence of the legislative filibuster, everything that passes at 51 votes can also be undone by the next majority – at 51 votes.
- e. NOTE 5: There are not currently 51 votes in the Senate to “nuke” the filibuster, so it is an academic (albeit important) debate.

7. SUMMARY:

- a. The House has set up an 85% issue (Voter ID/citizenship) on the fastest track possible in the Senate.
- b. There are 50 Republicans who co-sponsor or support the SAVE America Act.
- c. The Senate Majority Leader (Thune) can put the bill on the floor any time.
- d. So long as a majority (i.e. all the supportive Republicans have to help) shows up and present a live quorum, when summoned, (i.e. show up to the floor when called), it forces Democrats (or anyone objecting) to SPEAK to delay a vote at 51.
- e. So long as the majority is disciplined (Thune enforced) and 1) tables every amendment (limiting debate to the bill *only* by forcing Democrats to speak on the floor until they run out of ability to continue), and 2) enforces the 2-speech rule, then they can ultimately force a vote on the matter.
- f. The Senate can “toggle” between the legislative business (the SAVE America Act in this case) and Executive business (nomination) and continue to do nominations until we win the legislative fight.
- g. We can move legislation under CURRENT rules without “nuking” the filibuster (for which there currently are not the votes).
- h. RESULT: Worst case scenario – Democrats filibuster to death an 85% issue like Voter ID and citizen voting in front of the entire country. Best case scenario – Democrats filibuster an 85% issue, and we defeat them and it becomes law, either at simple majority or in a negotiated product that gets 60. Either way America knows who is with them.

Respectfully,



Chip Roy
Member of Congress