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## A One-Track Senate

**BARRY FRIEDMAN and ANDREW D. MARTIN** MARCH 9, 2010

THE Senate is badly gummed up. Major policy initiatives — health care reform and financial regulation, to name but two — are stalled in endless negotiations. There’s a big reason for this torpor: the filibuster. But there’s a solution: the filibuster. Don’t be confused. The two aren’t the same.

During the 1960s, the Senate was frozen by lengthy filibusters over civil rights legislation. When, in the mid-’70s, that tactic once again threatened to bring the Senate to a standstill, Robert Byrd, the West Virginia Democrat who was the majority whip, invented a dual-track system. This change in practice allowed the majority leader — with the unanimous consent of the Senate or the approval of the minority leader — to set aside whatever was being debated on the Senate floor and move immediately to another item on the agenda.

The result of tracking? No more marathon debate sessions that shut down the Senate. While one bill is being “filibustered,” business can continue on others.

Today a “filibuster” consists of merely telling the leadership that 41 senators won’t vote for a bill. Worse, any single senator can put a “hold” on

anything, indefinitely, for any reason. Not only has it become easier to “filibuster,” but tracking means there are far fewer consequences when the minority party or even one willful member of Congress does so, because the Senate can carry on with other things.

Tracking allowed Republican Senator Richard Shelby of Alabama to stop 70 administration nominees while pursuing earmarks for his home state. It permitted the Senate to conduct other business, like confirming a circuit-court judge, during the recent hold by Jim Bunning, Republican of Kentucky, on the unemployment benefit extension. During the “filibuster” of the Senate health care bill, it cleared the way for months of other votes.

Because dual-tracking is a Senate practice, not a formal rule, the majority leader, Harry Reid, could end tracking at any time. By doing so, the Democrats would transform the filibuster and recover their opportunity to govern effectively.

To pull this off, the Democrats need to take three steps: First, they should announce the order in which they will take up their legislative agenda. Next, they should declare that they will no longer be using dual tracking, so that the Senate will hear just one issue at a time. Finally, Democrats should require those who want to filibuster legislation or appointments to actually do so, by holding the floor, talking the issue to death and bringing everything to a halt.

The new-school filibuster would preserve minority rights in the Senate, while imposing significant costs on obstructionist members, changing the calculus that causes today’s logjam. Stuck on the Senate floor, filibustering senators couldn’t meet with lobbyists or attend campaign fund-raising events; they couldn’t do much of anything, really, until their filibuster ended.

Getting rid of dual-tracking would require the minority to make careful choices about what to obstruct, and when to obstruct it. As Senator Bunning’s unsuccessful solo stand against jobless benefits showed, even Republicans have limited tolerance when it comes to stalling legislation for reasons that

lack popular support.

After all, filibusters historically broke when public opinion went against the Senate minority. If the Democratic leadership eliminated the dual-track system, serial, single-issue filibusters would give us an opportunity to see where the country actually stands on issues like health care reform and financial regulation — and where the Senate should stand.

By consistently blocking legislation, Republicans have made great political gains over the last year. But in a Senate without dual-tracking, Democrats would be able to simply and repeatedly remind the American people that after endless debate there always comes time for a vote. Win or lose, that is how things work in a democracy.

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