

## Historical Perspective of “Reid Omnibus”

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### Background

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It is expected that Majority Leader Reid plans to bring to the floor the “Reid Omnibus” sometime in the next week. This legislation is 398 pages and contains approximately 35 various bills. Although a CBO score is not available, based on previous estimates of the individual bills, the legislation authorizes more than \$11 billion in federal spending.

Equally important to this debate as to how the costs of these bills will impact the future of our country, is how antithetical this process is to history of the Senate and how the institution was fundamentally designed by the Founders. Central to this concept is that deference to individual and minority rights is the most coveted and hallowed ideal of the Senate.

The proposed “Coburn omnibus,” a bill unprecedented in Senate history, would essentially destroy the most sacred right of a senator, and more importantly, would unglue the underpinnings—minority rights— of a body that is regarded the past two centuries as the finest and greatest deliberative body of government in the world. The historical context and consequences of this legislation cannot be overstated.

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### Foundation of the Senate

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Following the Revolutionary War, the Founding Fathers strove to create a system that protected the people from the tyranny of a king. However, in their infinite wisdom, the Founding Fathers feared not only the people’s rulers but the peoples themselves— or a democracy strictly by majority rule. “Liberty may be endangered by the abuses of liberty as well as the abuses of power,” James Madison wrote. These abuses were more than likely because the emotions of men in the mass ran high and fast, they were “liable to err...from fickleness and passion,” and “the major interest might under sudden impulses be tempted to commit injustice on the minority.”

Tripartite government was the result, with legislative responsibilities subdivided between the House of Representatives and the Senate to provide additional checks and balances on elected officials. Senate rules were designed intentionally by the Founders to slow the legislative process, or, in the words of Edmund Randolph, to smooth “the turbulence and follies of democracy.” The Framers were deeply concerned that the Senate “consist in its proceedings with more coolness, with more system, and with more wisdom, than the popular branch [House of Representatives].”

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### Minority Rights

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In order to erect what James Madison called “a necessary fence” against the majority will, the Framers made the Senate a powerful institution. The “necessary fence” manifested itself the informal principle of “unlimited debate.” All throughout the 19<sup>th</sup> century and early 20<sup>th</sup> century, legislation was constantly thwarted, as there was no procedural mechanism to end debate and force a vote.

In 1917, the cloture rule was adopted by the Senate. The cloture rule, then and today, represents the fulcrum on which individual member’s rights and the will of the overall body is balanced. As

the cloture rule was honed and strengthened through the middle of the 20<sup>th</sup> century, minority rights still prevailed as cloture was only invoked five times between 1917 and 1962.

By the middle of the 20<sup>th</sup> century, Congress began to dramatically expand the size and scope of government, requiring an increase in the volume of legislation Congress had to consider to authorize these programs. This faster-paced method of legislating did not comport to the functioning of the Senate, which was fundamentally designed to move slowly to provide for the thoughtful consideration of all legislation.

During Lyndon Johnson's time as Majority Leader in the late 1950s, he fundamentally altered the way the Senate conducted its affairs in order to expedite business. The primary procedural tool that he engineered is known today as the "unanimous consent agreement," which is often used to limit the amount of debate time and the number of amendment allowed to be offered to a piece of legislation.

This drastically restricted the function of the Senate, which had operated nearly for the past 150 years under the informal rule of unlimited debate. Robert Caro, author of *Master of the Senate*, had this to say about the impact on the UC agreement on the Senate:

Lyndon Johnson's use of the unanimous consent agreement to drastically limit debate ran contrary to the principles on which the Senate had been founded, and the customs which had, during the previous century and half of its existence, been most fundamental in its functioning. Unlimited debate had been sacred Senate custom, the device by which, more than any other, it fulfilled the Founding Fathers vision of it as the bulwark against the fickleness and transient impressions of the majority, as the guarantor of the sovereignty of the individual states. And it was debate—in its highest sense: unhurried, thoughtful discussion to educate first the Senate and then the people, to raise issues and examine them in depth and at length—That had made the Senate a great deliberative body. Johnson's agreements limited debate so drastically that with their increased use the very nature of the Senate was altered.

Today, the procedural weapon Harry Reid is perpetrating on the minority, otherwise known as "filling the tree," is far more egregious in its impact on the Senate than LBJ's use of the UC agreement. The UC agreement, if no objection was made by the 99 other senators, still allowed debate and amendments. Majority Leader Reid's use of filling the tree, joined with filing cloture, preempts any input into legislation from each of the 99 other senators and destroys the two distinguishing characteristics of the Senate, the right to debate and the right to amend. Majority Leader Reid has effectively neutered the capacity of the Senate to function in any semblance to how it was fundamentally designed by our Founding Fathers—and, as a result, is now a functional duplicate House of Representatives.

The last bastion of minority rights, the "hold," is now also under attack. Senator Reid would like to end the hold process once and for all by combining all bills currently being held by certain members into one large omnibus bill for the purpose of eliminating minority input. If Senator Reid proceeds to bundle together a bill of an individual member's holds, fills the tree, and files cloture on the "Reid Omnibus," he would effectively trample every right a minority member possesses. It is not an overstatement to say that this legislation is largest assault on minority rights in the history of the United States Senate.

*\*\*Portions of this memo are taken from Robert Caro's book, Master of the Senate*