

# For 100 years, the filibuster has been used to deny Black rights

The most significant impact of the Senate's supermajority rules



Sen. Joe Manchin III (D-W.Va.) walks through the U.S. Capitol on March 17. (Samuel Corum/Bloomberg News)

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Simmering debate on the future of the filibuster has increased further now that President Biden has endorsed proposals to force senators who filibuster to hold the Senate floor, in the hopes that the exhausting ritual will diminish the number of filibusters obstructing legislation. The stakes are high, given that a voting rights bill looms in the near future. But even proponents of change who point to the filibuster's long history of hindering civil rights measures leave out a crucial and gruesome chapter in the making of the modern filibuster.

The most famous such use of the filibuster was against the Civil Rights Act of 1964. [Opponents of the Act filibustered for a record-breaking 60 working days.](#) Millions of Americans watched as CBS's Roger Mudd reported live from the steps of the Capitol on white Southern senators' efforts to kill the legislation.

But the modern filibuster's first civil rights fatality actually occurred decades earlier in the searing 1922 defeat of the Dyer Anti-Lynching Bill. The Senate's abandonment of this landmark legislation in the history of anti-Black violence is little remembered today, but it set a path for partisan and ideological battles in the century since and continues to reverberate in our legal system.

Lynch mobs murdered more than 4,000 Black people between the end of Reconstruction and the middle of the 20th century. Activists such as Ida B. Wells and organizations such as the NAACP worked to expose the savagery of lynching, to debunk the pervasive myth that lynch mobs avenged the rape of white women and to revive public and legislative concern for Black lives for the first time since the retreat from Reconstruction. Anti-Black violence had risen to grim peaks during the horrific Red Summer of 1919. The deadliest race riot erupted in [Elaine, Ark.](#), where 500 heavily armed soldiers, local law enforcement and white vigilantes killed hundreds of Black sharecroppers who had dared to join forces in the sale of the year's valuable cotton crop.

Resurrecting the GOP's history as the party of Lincoln and Reconstruction, a contingent of liberal Republicans renewed what had been a sporadic push for anti-lynching legislation. Rep. Leonidas Dyer's (R-Mo.) anti-lynching proposal was the most ambitious to date. The bill would have empowered the federal government to prosecute private actors who participated in lynchings and fine counties that failed to prevent the violence. In the wake of the Republican electoral sweep in 1920, Dyer garnered support from his House colleagues and the Senate Judiciary Committee. President Warren G. Harding seemed to offer support, too, even if lukewarm. The Dyer Bill passed in the House on Jan. 26, 1922. The NAACP — barely a decade old — claimed the passage as a great legislative victory.

Despite this substantial backing, the bill ultimately died a procedural death at the hands of a filibuster led by Southern Democrats. Indeed, the Dyer Bill drama inaugurated a new era for the legislative tactic. Filibusters had been largely ineffective until the 1880s, when politicians from both sides of the aisle began to use them successfully to delay or amend disfavored legislation. White Southerners in particular saw the tactical utility of the maneuver, invoking it to [block a voting rights bill in 1891](#). But after anti-militarists led by Sen. Robert La Follette of Wisconsin used a filibuster to block President Woodrow Wilson's proposal to arm merchant ships against German U-boat attacks during World War I, the Senate moved to adopt a new parliamentary policy. The rule of "cloture," adopted in 1917, enabled a two-thirds vote to close debate and overcome the antics of a determined minority.



The Dyer Bill put the new cloture mechanism to its first great test. For the first time, noted The Washington Post, "filibusters frankly avowed that they were filibustering." The New York Times explained the "novelty" of the Dyer Bill blockade: "Never has the Senate so openly advertised the impotence to which it is reduced by its antiquated rules of procedure." Small-town newspapers shared The Post's and Times's surprise at the filibusterers' method. A Sumter, S.C., paper chronicled what Senate aides had dubbed, "the most scientifically conducted filibuster."

The Dyer Bill filibuster was highly theatrical. Senators schemed strategies to delay the debate, stretching routine parliamentary procedures into lengthy ordeals. Members read stacks of books, pamphlets and newspapers to their colleagues, sometimes for as long as eight hours. In papers across the country, the public expressed a common shock that a single procedural rule could "prevent a legislative body from legislating."

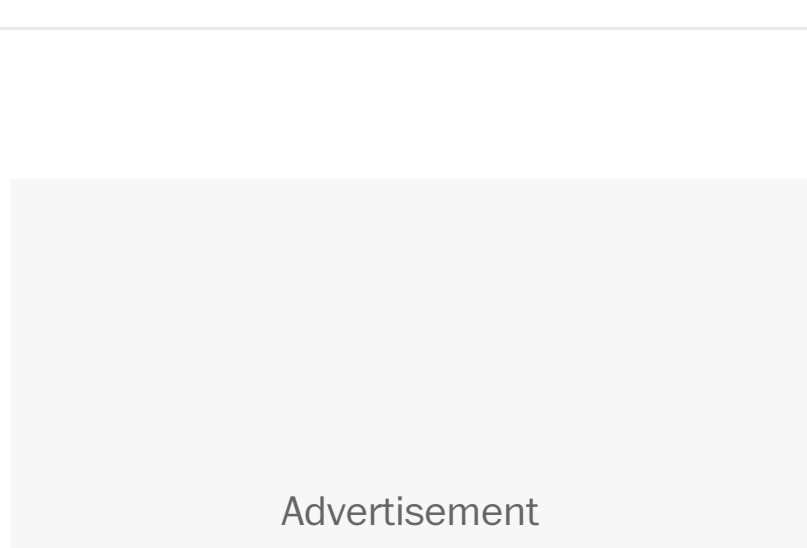
Ultimately, the new cloture rule failed to rescue anti-lynching legislation. On Dec. 2, 1922, Republicans surrendered. Leading Republicans such as Sen. William Borah of Idaho refused to vote to invoke cloture, citing objections to the bill's constitutionality. In truth, the party had been preparing for the bill's defeat from the beginning. Committed reformers like Dyer aside, many Republicans had supported the bill to court Black voters in the November midterm elections. Years later, a cynical Borah would brag to W.E.B. Du Bois that the Dyer Bill fiasco had been "one of the finest illustrations of how we played politics with the negro that I know of."



Civil rights leaders seethed. The NAACP's magazine commented bitterly that the bill "was not killed by a majority vote but was lynched by a filibuster." The organization's leader, James Weldon Johnson, charged that responsibility for the bill's collapse rested "equally with the Republican majority" as with the "lynching tactics of the Democrats." The filibuster, he continued, was a "license to mobs to lynch unmolested." And in fact, in the eight days following the bill's collapse, vigilantes lynched another four Black Americans.

In defeating the Dyer Bill, Southern Democrats honed the filibuster as a weapon against civil rights reform. Many of the same Southern White senators filibustered again in the 1930s to block the Costigan-Wagner Anti-Lynching Act, even though this time the bill's sponsors were members of Southerners' own party.

Such early obstructionism proved to be rehearsals for 1964 and other civil rights showdowns. Sen. [Strom Thurmond \(R-S.C.\) spoke for a record 24 hours to stall the passage of the Civil Rights Act of 1957.](#) The version of the act that eventually succeeded was significantly watered down, lacking critical enforcement provisions. Even as recently as last year, [Sen. Rand Paul \(R-Ky.\) conducted a one-man blockade against](#) a 21st century attempt to enact a new version of the federal anti-lynching law the House first passed a century ago.



The Dyer Bill episode also shaped civil rights advocates' strategies in the century to come. The failure of key Republicans to fight the filibuster was an early sign that the party would abandon its historic civil rights platform, leading a small but important contingent of Black Americans to leave the party. In the 1924 presidential campaign, influential Black leaders threw their support to La Follette, the Progressive Party candidate. Fatefully, the experience of failure in the electoral arena also turned civil rights politics away from legislation and toward the courts. A few months after the Dyer Bill failed in the Senate, the U.S. Supreme Court overturned the outrageous criminal conviction of Black defendants in a case arising out of the Elaine massacre. (No whites had been prosecuted.) The Court seemed poised to do what Congress would not.

For decades thereafter, organizations such as the NAACP would take the lesson to heart — for better and for worse. On one hand, the shift in strategy led to *Brown v. Board of Education* and the ruling that mandatory segregation was illegal. On the other hand, the legal institutions in which civil rights advocates invested their energies would also prove woefully inadequate in delivering racial equality in the United States.

The first modern filibusterers transformed a procedural tactic into a powerful tool for entrenching white supremacy and thwarting progress. Critics at the time angrily and correctly labeled the stagnant 1922 legislature the "Do-Nothing Congress." When assessing their fealty to the filibuster today, senators from both parties should be wary of earning the same epithet.

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