Filibustering in the States

JAMES M. CURRY, UNIVERSITY OF UTAH

ROBERT L. OLDHAM, PRINCETON UNIVERSITY

STATE OVERSIGHT ACADEMY SYMPOSIUM

JUNE 21, 2024

Abortion filibuster in SC

- Total abortion ban passed House in February 2023

- Senate Rule 15A: debate ended by either 26/46 senators of 60% of those present.

- Cloture failed 4 times despite majority support.

- Result: Senate passes six week ban instead.

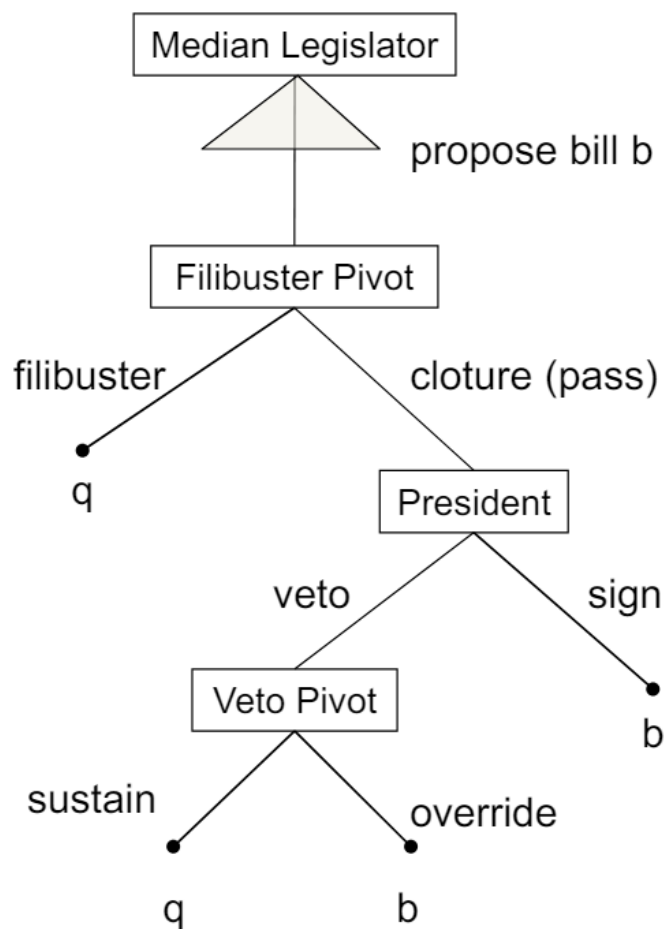- Classic Pivotal Politics outcome (Kriehbiel 1998)

Pivotal Politics
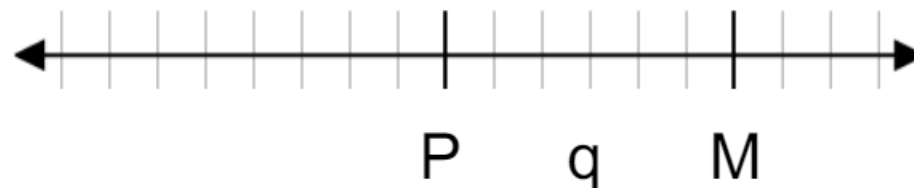
MAIN TAKEAWAY:

Filibuster pivot can use her "veto" to either **_block_** legislation

OR

force the majority to **_compromise_** by bringing in more minority legislators

Abortion filibuster in MO

▶ Heartbeat abortion ban considered in 2019.

▶ House and Senate rules allow majority to end debate.

▶ Senate Democrats (10/34 seats) threatened a filibuster

▶ Result: two parent notification requirement scaled back to one parent in most cases. Bill passed 24-10

▶ Not in line with Krehbiel model; Democrats had no "veto"

Puzzle

▶ When do filibuster rules empower legislative minorities?

▶ Congress literature (and the media) emphasizes the supermajority "pivot" for ending the Senate filibuster (Krehbiel 1998; Sinclair 2014; Ryan 2020).

▶ However, the Senate filibuster has not always worked like a supermajority rule (Mayhew 2003; Koger 2010)

▶ Norms (Azari and Smith 2012) and time pressures (Kousser and Phillips 2012) also matter.

Looking to the states

- States have significant variation in their formal debate rules.

- State legislative filibustering has received increased media attention since Wendy Davis in 2013.

- Little attention from scholars although some use formal supermajority rules as pivot model (Boehmke et al. 2015)

Our approach

- Systematic data collection of all debate rules in state houses and state senates.

- Empirical testing – Do chambers with supermajority debate rules see outcomes that suggest the rules empower minorities?

  - More media coverage of obstruction
  - Larger coalition sizes on roll call votes
  - Failure of major legislative proposals

New data

- Read the rules for all 99 state legislative chambers in 2017-2024.

- Looked for rules that allowed for "previous question," "cloture," or "end debate."

- 72 of 99 chambers → simple majority

- 27 chambers have supermajority rules

New data

- 27 chambers have SM debate rules
  - 14 state houses
  - 13 state senates

- We consider anything that could plausibly give the supermajority pivot the ability to obstruct
  - Different thresholds
  - Time limits on debate
  - Talking filibuster
  - Committee of the Whole only

New data

- Five chambers use 3/5 rule
  - Alabama House and Senate
  - Hawaii Senate
  - Maryland Senate
  - South Carolina Senate

New data

18 chambers use 2/3 rule

- Alaska House/Senate
- Arkansas House/Senate
- Florida Senate
- Idaho House/Senate
- Louisiana Senate
- Massachusetts House
- Montana House

- Nebraska Unicameral
- New Mexico House
- Tennessee House/Senate
- Utah House
- Virginia House
- Washington House
- Wyoming House

New data

- Two chambers use 3/4 rule
  - New Jersey House
  - Vermont House

- Two chambers prohibit closing debate
  - Utah Senate
  - Vermont Senate

New data

- What should we see with SM debate rules?

  - More examples of obstruction
    - NewsBank searches in each state from 2013-2023

  - Larger roll call coalitions/fewer narrow wins
    - Open States roll call data from 2017-2022

  - More high profile failures/fewer narrow wins
    - All gubernatorial SOTS proposals in 2019

Media coverage of obstruction

- Do states with supermajority rules have more media coverage of legislative obstruction?

- Admittedly, this is a problematic test
    - Inherent difficulty of observing obstruction
    - Media coverage of state politics is sparse

- OLS regression model predicting likelihood of obstruction
    - Obstruction: None, Some (1-4 examples), Significant (5+)
    - Control for part-time vs. full time legislature, # of sources

Table 4: OLS regressions predicting *significant* minority obstruction (2013-2023)

	(1)	(2)	(3)	(4)
SM rules	0.0667			0.0633
	(0.1076)			(0.1088)
Sources (ln)		-0.0037		0.0492
		(0.0607)		(0.0671)
Part time			0.2000	0.2376
			(0.1291)	(0.1445)
constant	0.1333*	0.1769	1.11×10^{-16}	-0.2798
	(0.0680)	(0.2819)	(0.1155)	(0.3810)
N	50	50	50	50
R^2	0.00794	.0000776	0.04762	0.06306
Adjusted R^2	-0.01273	-0.02075	0.02778	0.00196

Note: *** $p<0.01$, ** $p<0.05$, * $p<0.1$

Size of legislative coalitions

- Do states with supermajority rules have larger coalition sizes on roll call votes?

- 168,000 roll call votes from Open States
  - 62,000 votes were contested with more than one "nay"

- OLS regression models predicting coalition size
  - Debate threshold (0.5, 0.6, 0.67, 0.75)
  - Control for majority party size, unified, Democratic, polarization, professionalization, and Senate/House

Table 5: Predicting roll call coalition sizes

	Coalition size		Close vote (55% yea or less)	
	All	Contested	All	Contested
End debate threshold	0.0223***	-0.0376***	0.0050	0.0082
	(0.0047)	(0.0085)	(0.0062)	(0.0156)
Majority party size	0.0820***	0.0590***	-0.1505***	-0.2920***
	(0.0036)	(0.0065)	(0.0047)	(0.0112)
Unified	-0.0225***	-0.0020	0.0067***	-0.0253***
	(0.0009)	(0.0016)	(0.0012)	(0.0029)
Democratic	-0.0106***	-0.0355***	-0.0046***	0.0008
	(0.0009)	(0.0016)	(0.0013)	(0.0032)
Polarization	0.0158***	-0.0256***	0.0068***	0.0162***
	(0.0007)	(0.0014)	(0.0009)	(0.0024)
Professionalization	0.0435***	0.0824***	-0.0857***	-0.1688***
	(0.0022)	(0.0036)	(0.0034)	(0.0072)
Senate	0.0249***	-0.0139***	-0.0275***	-0.0172***
	(0.0007)	(0.0012)	(0.0009)	(0.0023)
Region fixed-effects	✓	✓	✓	✓
Time period fixed-effects	✓	✓	✓	✓
N	168,312	61,867	168,312	61,867
R^2	0.03125	0.02912	0.01603	0.03265
Within R^2	0.02055	0.02646	0.01578	0.03043

Heteroskedasticity-robust standard-errors in parentheses

*Note: *** $p<0.01$, ** $p<0.05$, * $p<0.1$*

Gubernatorial proposals

▶ Do states with supermajority rules see more failures of key gubernatorial proposals?

▶ Do states with supermajority rules see more support for successful gubernatorial proposals?

▶ We identified 336 **_policy_** proposals in 2019 SOTS addresses (Kousser and Phillips 2012)

   ▶ 6.7 proposals per governor

   ▶ 223 (~66%) were successful

Table 7: Predicting success on gubernatorial proposals

End debate threshold	0.0302
	(0.3283)
Unified	0.2503**
	(0.1015)
Polarization	0.1559***
	(0.0503)
Average size of governor's party	0.2232
	(0.3013)
Professionalization	-0.2123
	(0.1404)
Region fixed effects	✓
N	336
R^2	0.12342
Within R^2	0.09892

Heteroskedasticity-robust standard-errors in parentheses
*Note: *** $p<0.01$, ** $p<0.05$, * $p<0.1$*

Table 8: Predicting coalition size on gubernatorial proposals

	Coalition size	Less than 60% support
End debate threshold	-0.0605	0.3261
	(0.1349)	(0.2594)
Unified	-0.1132***	0.0779
	(0.0413)	(0.0838)
Polarization	-0.0002	0.0385
	(0.0203)	(0.0287)
Average size of governor's party	0.1740	-0.0856
	(0.1271)	(0.2393)
Professionalization	-0.0933*	0.0044
	(0.0507)	(0.0926)
Region fixed-effects	✓	✓
N	223	223
R^2	0.08046	0.02410
Within R^2	0.05868	0.01841

Heteroskedasticity-robust standard-errors in parentheses

Note: *** $p<0.01$, ** $p<0.05$, * $p<0.1$

Summary

- We find no evidence that:

  - There are more examples of obstruction in states with supermajority debate rules

  - There are larger roll call coalitions in states with supermajority debate rules

  - That governors are less successful or offer more consensual proposals in states with supermajority debate rules

Conclusion

- State debate rules don't always or regularly operate like the Senate filibuster
  - This does not imply they are **_never_** important

- We should not automatically treat them as supermajority pivots, particularly in 50 state studies.

- Resist the temptation to read the rules and make assumptions about how a legislature operates

Our suggested approach

► Develop local knowledge about the state legislature through interviews, case studies, etc.

► Pay more attention to the role that chamber-level norms play in how rules are used.

► Final step for our paper:

  ► Conduct interviews in states with supermajority rules/no obstruction and no supermajority rules/obstruction

Role of norms

- Missouri – filibustering "is part of the process, if you use it properly and correctly" (Sen. John Rizzo)

- Nebraska -- "The rules allow her to do this, and those rules are there to protect the voice of the minority" (Speaker John Arch)

- Delaware – filibustering violates "senate norms" (Sen. Bryan Townsend)

Thank you!

- roldham@princeton.edu

- james.curry@poli-sci.utah.edu