

A Lethal Weapon: The Filibuster as an Obstacle to Gun Violence Prevention



The filibuster is a procedural tool of the Senate that delays or prevents a piece of legislation from being brought to a vote. It is a vestige of a deal made to appeal to segregationists and has historically been used to block passage of civil rights legislation. Today, it is weaponized by a small group of senators to override the will of the majority and block progress across a variety of issue areas.

Aside from matters of civil rights, nowhere has this been more evident than on the issue of gun violence prevention, where the most common-sense proposals to protect the lives of our children and our communities have received a majority of votes, but have failed to pass the filibuster threshold of 60 votes to become law. Elimination of the filibuster will allow Congress to pass life-saving gun violence prevention legislation that reflects the will of the people and protects Americans.

This brief will explore the racist history of the filibuster and how it came to be used as it is today. It will outline this history specifically through the lens of gun violence prevention, cataloging legislation that has been impeded by the use of the filibuster, obstructing progress toward safer communities and fewer needless tragedies. Finally, it will look toward the current political landscape and examine crucial legislation that has been or will soon be introduced to keep our communities and families safer yet stands to be blocked by the filibuster, painting a grim picture of the future of gun violence prevention if we don't eliminate the filibuster.

Elimination of the filibuster will allow Congress to pass life-saving gun violence prevention legislation that reflects the will of the people and protects Americans.

The filibuster allows a minority of senators – who represent a minority of voters – to block progress on gun violence prevention legislation.

The origins of the filibuster

The filibuster is a procedural tool used by senators to delay or block the passage of a piece of legislation. Typically, a bill only requires a 51-vote simple majority to pass the Senate, but the filibuster – which allows for endless debate of a bill – makes it such that, to “invoke cloture,” or end debate, a 60-vote supermajority must be met. As such, the filibuster establishes a de facto 60-vote threshold for a bill to pass the Senate.

The notion of a filibuster or anything like it cannot be found in the Constitution or any other founding document, nor was it part of the original Senate. The endurance of the filibuster – itself an accident of history – has long been a stain on our country's march toward progress. Its legacy of racism and oppression only solidifies its use as a tool by those seeking to maintain a status quo that works for a very select few.

Its origin can be traced back to an 1806 drafting error when, at the advice of Vice President Aaron Burr, a provision was removed from the Senate rules that had allowed a simple majority to force the Senate to vote on the bill being presented.¹ It was a housekeeping matter; Burr thought the rule was redundant, as it was rarely used and its function was covered by other Senate operating procedures. Senators discovered this mistake and the absence of any mechanism to force a vote decades later, around the time of the Civil War, and used the inability to force a vote on a piece of legislation to occasionally block the passage of bills. Then in 1917, as the United States was preparing to enter World War I and the Senate was deadlocked over the particulars of how to do so, the first version of the cloture rule to end debate was adopted, giving two-thirds of senators the ability to vote to end debate and end a filibuster and proceed to a final vote on a piece of legislation. Details of the process have changed in the century since then, but the bottom line is the same: The filibuster exists only to obstruct legislation, and it has no basis in the Constitution.

¹ Reynolds, M. E. (2021, January 29). What is the Senate filibuster, and what would it take to eliminate it? Brookings Institution. <https://www.brookings.edu/policy2020/votervital/what-is-the-senate-filibuster-and-what-would-it-take-to-eliminate-it>

In fact, the filibuster as it is used today is completely antithetical to the Framers' vision for the Senate, which was conceived to be a *majority-rule* institution with space for thoughtful – but limited – debate. In its current form, the filibuster allows the will of a small minority of senators to supersede that of the majority of the American people by artificially raising the bar for passage of bills in the Senate. What came about as the result of a drafting error over 200 years ago has become a tool of obstruction, misused and abused to the detriment of our democracy and our citizens.

The filibuster's continued racist implementation

Since the early 20th century, the filibuster has been the primary weapon of racist, segregationist politicians to delay and restrict progress – primarily in the form of civil rights. In the mid-1900s, strict party-line votes in the Senate were less common than they are now; senators often voted with members of the other party and varied groups of voting blocs were formed resulting in more bills passed.² Because senators were more willing to cross party lines, the minority party was not always able to compel its members to maintain a filibuster and prevent the majority party from enacting popular legislation. However, one group was able to consistently organize to take advantage of this procedural weapon: southern segregationists.

Even with the abolition of slavery after the Civil War, the reality of racial violence continued to terrorize Black people for decades, and many politicians did little to stop it. Well into the 20th century, Black Americans were routinely lynched by racist white mobs across the country. Legislation was introduced in Congress to classify these heinous lynchings as federal crimes, and yet, every single one of the almost 200 anti-lynching bills introduced in Congress in the first half of the 20th century failed, many because of the filibuster.³ Racist politicians were able to effectively filibuster these bills and block their passage despite wide public support: In 1937, a Gallup poll found that 72 percent of Americans supported federal anti-lynching legislation.⁴ To this day – over a century after the first anti-lynching bill was introduced – Congress has yet to pass a single measure explicitly making lynching a federal crime. This ugly history and ongoing manifestation of the filibuster as a favored tool by racist politicians is why the NAACP has led the charge to eliminate the filibuster since 1948.⁵

Today, the act of filibustering a bill requires very little effort. A rule tweak in the 1970s established a “two-track” system, creating the “silent filibuster,” which allows the Senate to simply set aside a filibustered bill and carry on with other Senate business. This change effectively ended the “talking filibuster,” which had required senators to actively hold the Senate floor; by refusing to cede the microphone, senators could indefinitely delay or block a bill.⁶ Now, there is no need to hold the floor, because Senate business continues as usual on the second track. A senator simply has to register *intent* to filibuster a bill with the Senate clerk, and the threshold for moving to a vote on a bill jumps from 51 to 60 votes. This gives a small, organized group of senators the power to grind proceedings on important bills to a halt whenever they want with no consequences and little fanfare, while other Senate business continues as usual.

The filibuster as we know it is used on a broader scale than ever before and is regularly weaponized by Senate Minority Leader Mitch McConnell to stop all forms of progress, despite their urgency, bipartisan support, or popularity.

Uptick in filibuster usage

Under Senate Minority Leader Mitch McConnell, use of the filibuster in its new, silent form has broadened outside of purely civil rights legislation and has been used to block virtually all substantive legislation proposed by Democratic lawmakers in recent years.

² The Brookings Institution. (2021, February). *Vital Statistics on Congress* (Chapter 8: Political polarization in Congress and changing voting alignments). <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/>

³ History, Art & Archives, U.S. House of Representatives. (2008). *Black Americans in Congress, 1870–2007: Anti-Lynching Legislation Renewed*. <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Temporary-Farewell/Anti-Lynching-Legislation>

⁴ Jentleson, A. (2021). *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy*. Liveright.

⁵ King, C. I. (2005, June 18). The Filibuster: A Tool for Good and Bad. *The Washington Post*. <https://www.washingtonpost.com/archive/opinions/2005/06/18/the-filibuster-a-tool-for-good-and-bad>

⁶ Strand, M., & Lang, T. (2017, September 25). *The U.S. Senate Filibuster: Options for Reform*. Congressional Institute. <https://www.congressionalinstitute.org/2017/09/25/the-u-s-senate-filibuster-options-for-reform>

McConnell has used the filibuster at an unprecedented rate: Prior to President Obama's tenure, cloture – a common proxy for quantifying filibusters – had been invoked during a congressional session at most 61 times, during President George W. Bush's final term. But from 2008 to 2016, as McConnell used the filibuster to repeatedly stonewall the Obama administration's agenda, it was invoked 351 times – including 187 invocations during a single Congress, from 2013–2014.⁷

As McConnell's filibuster usage soared, productivity in the Senate plummeted: a Pew Research Center analysis revealed that the 112th and 113th Congresses – when Mitch McConnell was Senate Minority Leader under President Obama from 2011 through 2015 – were the least productive sessions in almost three decades.⁸ McConnell weaponized the filibuster under President Obama unabashedly, and will continue to obstruct necessary progress under the Biden-Harris administration as long as he has the tools to do so.⁹ In the last two decades, McConnell used the filibuster to prevent a myriad of legislation from advancing, from voting rights protections and comprehensive immigration reform to campaign finance reform and, of course, gun violence prevention.¹⁰

Most of the victims of the gun violence don't make the front page of the newspaper, but that doesn't make their deaths any less world-shattering for those they leave behind.

Every single day, gun violence plagues our communities and tears families apart.

Gun deaths are on the rise

Since the turn of the century, gun deaths have been steadily rising.¹¹ We see headline after headline about the latest mass shooting, but in fact, more than 96 percent of gun homicides are from non-mass shootings; most of the victims of gun violence don't make the front page of the newspaper, but that doesn't make their deaths any less world-shattering for those they leave behind.¹² Nor do the mass shootings that do receive mainstream news coverage represent the communities that are most affected by gun violence.¹³ Every day, over 100 people die from a gun.¹⁴ In addition to the harrowingly high death toll that accompanied the Covid-19 pandemic in 2020, last year also saw over 43,000 people killed with a gun – the most gun deaths in over 20 years.¹⁵

Gun violence disproportionately harms already-vulnerable communities

Gun access triples the likelihood of death for those at risk for suicide, the majority of which involve a gun.¹⁶ When a gun is involved, attempted suicide is fatal 85 percent of the time, compared to just 3 percent for other methods, which underscores the lethality of firearms.¹⁷ The majority of intimate partner deaths are from a gun, and victims are five times more likely to be killed when their abuser has access to a gun.¹⁸

⁷ *Cloture Motions*. (n.d.). U.S. Senate. <https://www.senate.gov/legislative/cloture/clotureCounts.htm>

⁸ DeSilver, D. (2019, January 25). *A productivity scorecard for the 115th Congress: More laws than before, but not more substance*. Pew Research Center. <https://www.pewresearch.org/fact-tank/2019/01/25/a-productivity-scorecard-for-115th-congress>

⁹ Green, J. (2011, January). *Strict Obstructionist*. The Atlantic. <https://www.theatlantic.com/magazine/archive/2011/01/strict-obstructionist/308344>

¹⁰ Tausanovitch, A. & Berger, S. (2019, December 5). *The Impact of the Filibuster on Federal Policymaking*. Center for American Progress. <https://www.americanprogress.org/issues/democracy/reports/2019/12/05/478199/impact-filibuster-federal-policymaking>

¹¹ Santhanam, L. (2019, October 9). *Gun deaths started to rise after more than a decade of being stable*. PBS NewsHour. <https://www.pbs.org/newshour/health/gun-deaths-started-to-rise-after-more-than-a-decade-of-being-stable>

¹² Everytown for Gun Safety Support Fund. (2020, November 21). *Mass Shootings in America*. Everytown Research & Policy. <https://everytownresearch.org/maps/mass-shootings-in-america-2009-2019/>

¹³ Schwartzapfel, B. (2020, October 28). *When Does Murder Make The News? It Depends On The Victim's Race*. The Marshall Project. <https://www.themarshallproject.org/2020/10/28/when-does-murder-make-the-news-it-depends-on-the-victim-s-race>

¹⁴ Giffords. (n.d.). *Statistics*. Giffords Law Center. <https://giffords.org/lawcenter/gun-violence-statistics>

¹⁵ Gun Violence Archive. (2021, April 13). *Past Summary Ledgers*. <https://www.gunviolencearchive.org/past-tolls/>

Thebault, R., & Rindler, D. (2021, March 23). *Shootings never stopped during the pandemic: 2020 was the deadliest gun violence year in decades*. *The Washington Post*. <https://www.washingtonpost.com/nation/2021/03/23/2020-shootings>

¹⁶ Anglemeyer, A., Horvath, T., & Rutherford, G. (2014). *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members*. *Annals of Internal Medicine*, 160(2), 101–110. <https://doi.org/10.7326/m13-1301>;

WISQARS Fatal Injury Reports. (2020, February 20). Centers for Disease Control and Prevention. <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html> Figures represent an average of the five years of most recently available data: 2014 to 2018.

¹⁷ Brady United. (2018). *The Truth About Suicide and Guns*. <https://brady-static.s3.amazonaws.com/Brady-Report-Suicide-and-Guns.pdf>

¹⁸ Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S. A., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Laughon, K. (2003). *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*. *American Journal of Public Health*, 93(7), 1089–1097. <https://doi.org/10.2105/ajph.93.7.1089>;

Giffords. (n.d.). *Statistics*.

Approximately 3 million children are exposed to gun violence every year, and guns are now the second-highest cause of death for children under 18.¹⁹

Due to centuries of systemic racism and marginalization, gun violence disproportionately devastates communities of color

Gun violence prevention and gun safety are fundamentally racial justice issues. Gun violence disproportionately harms Black communities in the United States. Because of the legacies of slavery and centuries of systemic racism, Black Americans are more likely than white Americans to live in areas that are underserved and underfunded, many of which are in cities that face disproportionate gun homicide rates.²⁰ Across the United States, Black Americans die from gun violence at twice the rate of white Americans, and are wounded by a gun at 14 times the rate of white Americans. Black men make up 52 percent of gun death victims – despite comprising less than 7 percent of the national population.²¹ Police violence is also gun violence; the presence of a firearm exacerbates the tensions present in an already unequal interaction, and it often leads to preventable violence. In 2012, Black people made up 31 percent of people shot and killed by the police, despite making up just 13 percent of the U.S. population.²² This trend – gun violence alone – manifests in a reduced life expectancy for Black Americans by *four full years*.²³

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Gun violence disproportionately affects other marginalized groups as well. Indigenous communities experience the harm inflicted by gun violence on a daily basis. From 1999 to 2015, Native Americans had the highest rate of fatal police encounters of any racial or ethnic group, the vast majority of which were police shootings.²⁴ Guns also lead to higher rates of suicide and homicide within these communities. Access to a firearm increases the chances of death by suicide compared to those without access to a gun;²⁵ and according to the Suicide Prevention Resource Center, suicide rates for American Indian/Alaska Natives are the highest among any racial or ethnic group, and have been increasing steadily since at least 2009.²⁶ Access to guns also makes it five times more likely that domestic violence will result in homicide.²⁷ Given that 80 percent of Native women report having experienced domestic violence in their lifetime – and Alaska Native women report experiencing such violence at a rate 10 times higher than anywhere else in the country – any attempts to make Indigenous communities safer must include increased gun violence prevention measures.²⁸

Further, as we have seen, guns serve to amplify and escalate the danger faced by communities who experience discrimination and violence at the hands of white supremacy. Just last month, the rise in discrimination against Asian-American and Pacific Islander communities associated with the Covid-19 pandemic reached a tragic degree when eight people were killed with a gun in Georgia, six of whom were Asian or Asian-American women.²⁹ As long as Congress refuses to implement common-sense gun violence prevention measures, these communities will continue to be in harm's way.

¹⁹ Fowler, K. A., Dahlberg, L. L., Haileyesus, T., Gutierrez, C., & Bacon, S. (2017). Childhood Firearm Injuries in the United States. *Pediatrics*, 140(1), e20163486. <https://doi.org/10.1542/peds.2016-3486>; Giffords. (n.d.). *Statistics*.

²⁰ Brady United. (2019). *Gun Violence is a Racial Justice Issue*. <https://www.bradyunited.org/issue/gun-violence-is-a-racial-justice-issue>

²¹ *WISQARS Fatal Injury Reports*. (2020, February 20). Centers for Disease Control and Prevention. <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html>. Figures represent an average of the five years of most recently available data: 2014 to 2018.

²² Giffords. (n.d.). *Statistics*.

²³ Kalesan, B., Vyliparambil, M. A., Zuo, Y., Siracuse, J. J., Fagan, J. A., Branas, C. C., & Galea, S. (2018). Cross-sectional study of loss of life expectancy at different ages related to firearm deaths among black and white Americans. *BMJ Evidence-Based Medicine*, 24(2), 55–58. <https://doi.org/10.1136/bmjebm-2018-111103>

²⁴ Hansen, E. (2017, November 13). *Native Americans: The forgotten minority in police shootings*. CNN. <https://edition.cnn.com/2017/11/10/us/native-lives-matter/index.html>

²⁵ Anglemeyer, Horvath, & Rutherford. (2014). The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members.

²⁶ Suicide Prevention Resource Center. (2020). *Racial and Ethnic Disparities*. <https://sprc.org/scope/racial-ethnic-disparities>

²⁷ Everytown for Gun Safety Support Fund. (2019, October 17). *Guns and Violence Against Women: America's Uniquely Lethal Intimate Partner Violence Problem*. Everytown Research & Policy. <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem>

²⁸ Indian Law Resource Center. (n.d.). *Ending Violence Against Native Women*. <https://indianlaw.org/issue/ending-violence-against-native-women>

²⁹ Rio, G. M. N., Sandoval, E., Berryman, A., & Knoll, C. (2021, March 26). Atlanta Shooting Spree: What We Know About the Victims. *The New York Times*. <https://www.nytimes.com/2021/03/19/us/atlanta-shooting-victims.html>

Mass shootings are surging

Legislation to curb gun violence is urgently needed. In 2020, the United States experienced over 600 mass shootings, an increase of almost 50 percent since 2019.³⁰ Since 2014, over 3,000 people have been killed in mass shootings. From schools in Parkland, FL, Newtown, CT, and Blacksburg, VA, to houses of worship in Pittsburgh, PA, and Charleston, SC; grocery stores in Boulder, CO; spas in Atlanta, GA; and office buildings, residential streets, movie theaters, concerts and nightclubs, there is no pocket of the country that gun violence has not touched. In just the first four months of 2021, there have been over 140 mass shootings.³¹ And even though gun violence from mass shootings disproportionately ravages Black communities, the news coverage that we see does not reflect that reality; During the two week period where national news covered mass shootings in Atlanta and Boulder, it did not cover two mass shootings on the south side of Chicago, where 96 percent of residents are Black.³²

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Americans need their lawmakers to help them stay alive, but Mitch McConnell and Senate Republicans continue to ensure that gun violence prevention measures rarely even get introduced in the body. Our country's epidemic of gun violence requires our lawmakers to take swift, bold action; instead, McConnell has continued to let bills and proposals pile up, wielding the filibuster as a tool of obstruction, while the rest of us pay the price with our lives.

Gun violence prevention legislation has been widely popular for decades.

The United States has a tradition of enacting common-sense gun laws

The desire to curb gun violence wasn't always a divisive one. In the wake of the assassinations of several high profile politicians and activists – including President John F. Kennedy and Dr. Martin Luther King, Jr. – President Lyndon B. Johnson signed the Gun Control Act of 1968. Among other things, the bill banned importing guns that had “no sporting purpose,” imposed age restrictions for the purchase of handguns, prohibited people convicted of felonies from purchasing guns, and required that most guns have a serial number. It passed with overwhelming majorities in the House and Senate, and even the National Rifle Association expressed its support for the final bill.³³

In 1993, President Bill Clinton signed the Brady Handgun Violence Prevention Act. The law was passed and enacted in response to the assassination attempt made on President Ronald Reagan, where White House Press Secretary James Brady was shot and severely injured. The law required a background check to be performed on anyone wishing to purchase a handgun. It also instituted certain restrictions on who could participate in the shipping and transport of firearms. The bill passed the House and Senate easily and had overwhelming public support (over 90 percent) at the time of signing.³⁴ President Reagan also publicly supported the bill.³⁵

³⁰ Gun Violence Archive. (2021). *Past Summary Ledgers*.

³¹ Gun Violence Archives. Mass Shootings in 2021. Retrieved 15 April 2021. from <https://www.gunviolencearchive.org/reports/mass-shooting>

³² U.S. Census Bureau. (2017). *Selected race characteristics, 2013-2017 American Community Survey 5-year estimates*. Retrieved from <https://archive.ph/20200212043708/http://factfinder.census.gov/servlet/SAFFacts>

³³ An Act to amend title 18, United States Code, to provide for better control of the interstate traffic in firearms, H.R.17735, 90th Cong. (As passed by House, July 24, 1968). Civic Impulse. To Pass H.R.17735, the House Bill Providing for Better Control of the Interstate Traffic in Firearms, After Substituting for its Text the Amended Language of S.3633., H.R.17735, 90th Cong. (As passed by Senate, September 18, 1968). Civic Impulse. <https://www.govtrack.us/congress/votes/90-1968/s558>; Rosenfeld, S. (2013, January 14). *The NRA once supported gun control*. Salon. https://www.salon.com/2013/01/14/the_nra_once_supported_gun_control

³⁴ Barringer, F. (1993, June 4). Majority in Poll Back Ban on Handguns. *The New York Times*. <https://www.nytimes.com/1993/06/04/us/majority-in-poll-back-ban-on-handguns.html>

³⁵ Reagan, R. (1991, March 29). Opinion | Why I'm for the Brady Bill. *The New York Times*. <https://www.nytimes.com/1991/03/29/opinion/why-i-m-for-the-brady-bill.html>

The following year, in 1994, a Federal Assault Weapons Ban – authored in part by Senator Dianne Feinstein (D-CA) – was included as part of the Violent Crime Control and Law Enforcement Act. The law banned the manufacture or sale of certain semi-automatic weapons for civilian use and also banned certain high-capacity magazines. For the ten years the law was in effect, certain weapons of war were no longer allowed on the streets of American cities and towns.

Although support has fluctuated over the years, a 2018 Gallup survey found that support for stricter gun laws was the highest it had been since 1993 – the year the Brady Bill passed.³⁶ In 2018, 67 percent of Americans said that they believed the laws covering firearm sales should be stricter, as opposed to just 4 percent who said they should be less strict. Banning assault weapons has also remained popular since the 1994 ban went into effect: Support has largely remained above 50 percent.³⁷

Despite that continued support, after the 1994 Assault Weapons Ban, meaningful gun violence prevention legislation stalled. In 2004, renewal of the Assault Weapons Ban failed, and Congress has not passed any measures that regulate guns on a national level since. Despite several high-profile mass shootings in the past two decades, Mitch McConnell and Senate Republicans have decided their own interests are more important than acting to stop the tragic loss of life Americans face every day and have used the filibuster to thwart meaningful progress.

The filibuster has blocked gun violence prevention legislation needed to address this series of tragedies.

In the past decade, as Mitch McConnell and Senate Republicans have been exploiting the filibuster to achieve their extreme agenda, mass shootings have skyrocketed.³⁸ Every attempt to pass common sense gun legislation at the federal level has been thwarted by the filibuster in one way or another: Several high-profile bills and amendments have been proposed but were ultimately prevented from getting a vote, and many more were simply never introduced in the Senate because it was clear that they wouldn't overcome the artificial 60-vote threshold imposed by the filibuster.

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Universal background checks

In the months following the horrific shooting at Sandy Hook Elementary School in December 2012 that killed 20 six- and seven-year-olds and 6 educators, Democratic lawmakers tried to pass legislation strengthening background check requirements for gun purchases.³⁹ Then, over 90 percent of Americans – transcending party and ideological lines – supported background checks for all gun sales (support for which remains high to this day); however, even that unified public support wasn't enough to encourage lawmakers to overcome the legislative filibuster and pass any meaningful reform.⁴⁰ A similar proposal was attempted in 2016, one week after the Pulse nightclub shooting that killed 43 people – which, at the time, was the deadliest mass shooting by a single gunman in American history.⁴¹ With only 46 senators in the Democratic caucus at the time, 14 Republicans needed to cross party lines to overcome the filibuster – a challenge that proved insurmountable; the bill failed.

Studies show that background checks would be an effective step in curbing gun violence.⁴² Moreover, requiring them for all gun purchases is overwhelmingly popular regardless of party affiliation: a Morning Consult poll from March 2021 showed that 84 percent of voters – *including 77 percent of Republicans* – support requiring anyone who wishes to purchase a gun to complete a background check.⁴³

³⁶ Jones, J. M. (2018, March 14). *U.S. Preference for Stricter Gun Laws Highest Since 1993*. Gallup. <https://news.gallup.com/poll/229562/preference-stricter-gun-laws-highest-1993.aspx>

³⁷ Newport, F. (2019, November 14). *Analyzing Surveys on Banning Assault Weapons*. Gallup. <https://news.gallup.com/opinion/polling-matters/268340/analyzing-surveys-banning-assault-weapons.aspx>

³⁸ Santhanam. (2019). *Gun deaths started to rise after more than a decade of being stable*. PBS NewsHour.

³⁹ Weisman, J. (2013, April 17). *Drive for Gun Control Blocked in Senate*. *The New York Times*. <https://www.nytimes.com/2013/04/18/us/politics/senate-obama-gun-control.html/>

⁴⁰ Peralta, E. (2013, February 7). *Poll: 9 In 10 Americans Support Background Check For All Gun Sales*. NPR. <https://www.npr.org/sections/thetwo-way/2013/02/07/171383152/poll-9-in-10-americans-support-background-check-for-all-gun-sales/>

⁴¹ Kim, S. M. (2016, June 20). *Senate rejects all gun bills*. Politico. <https://www.politico.com/story/2016/06/senate-gun-votes-224560/>

⁴² Kurtzleben, D. (2016, January 9). *Research Suggests Gun Background Checks Work, But They're Not Everything*. NPR. <https://www.npr.org/2016/01/09/462252799/research-suggests-gun-background-checks-work-but-theyre-not-everything/>

⁴³ Yokley, E. (2021, March 10). *Voters Are Nearly United in Support for Expanded Background Checks*. Morning Consult. <https://morningconsult.com/2021/03/10/house-gun-legislation-background-checks-polling/>

Under current federal law, gun purchases can be completed without a background check if the check takes longer than three days.⁴⁴ This is known as the “Charleston Loophole,” named in response to the Emanuel A.M.E. Church shooter who was able to acquire the weapon he used to kill nine people during Bible study in South Carolina despite being legally prohibited from purchasing a firearm. Closing this loophole is supported by all voters by a 10-point margin.⁴⁵ Although that is narrower than the margin of support for background checks, it still represents clear support for this type of gun violence prevention legislation. As of April 2021, 20 states and the District of Columbia had enacted legislation to address the Charleston Loophole.⁴⁶ The House passed legislation to address this loophole in March 2021, but the filibuster likely makes passage in the Senate impossible.⁴⁷

The Manchin-Toomey amendment

In an attempt to compromise on background checks, Senators Joe Manchin III (D-WV) and Pat Toomey (R-PA) introduced a narrower background check bill in April 2013. The amendment required background checks for unregulated commercial gun sales and had bipartisan backing.⁴⁸ Despite garnering 54 votes (then-Senate Majority Leader Harry Reid (D-NV) supported the bill as well, but voted no for procedural reasons), it failed to clear the filibuster-inflated 60-vote threshold.⁴⁹

The measure was introduced again with similar levels of bipartisan support in 2015 following the mass shooting in San Bernardino, CA, but was again voted down.⁵⁰ The bill resurfaced once more in 2019 after the House passed bipartisan legislation to increase background checks before gun purchases were allowed. Momentum surged later that year for the Senate to take up the bill after 31 lives were lost within 13 hours from two mass shootings in El Paso, TX, and Dayton, OH. Despite the tragedies, however, Sen. Toomey made it clear that the bill wouldn’t overcome a Republican filibuster, saying that “if the vote were held tomorrow, the vote would probably fail” because he still needed to “win over” enough senators to secure the total of 60 votes. The bill was never even brought to the Senate floor.⁵¹

Gun trafficking

Between 2013 and 2019, Senator Patrick Leahy (D-VT) introduced bipartisan legislation to address the issue of gun trafficking four times. His legislation would have increased penalties for straw purchasers – people who purchase guns on behalf of someone else, usually someone who is prohibited from purchasing a gun themselves⁵² – and would have made gun trafficking a federal crime.⁵³ Federal legislation on this issue is important because state laws extend only as far as state borders, meaning that the gun violence prevention measures in a given region are only as strong as the weakest laws in that region; a 2016 study from the New York Attorney General’s office found that 90 percent of crime guns that surfaced in New York City originated in another state.⁵⁴ However, despite receiving 58 votes of support in 2013 and having continued bipartisan support in the ensuing votes, the burden of needing to achieve 60 votes rather than a simple majority meant that none of the four anti-trafficking bills moved past introduction.⁵⁵

⁴⁴ Everytown for Gun Safety. (2020, April 7). *Close the Charleston Loophole*. <https://www.everytown.org/solutions/close-the-charleston-loophole>

⁴⁵ Yokley. (2021). *Voters Are Nearly United in Support for Expanded Background Checks*.

⁴⁶ Everytown for Gun Safety. (2020). *Close the Charleston Loophole*.

⁴⁷ Bipartisan Background Checks Act of 2021, H.R.8, 117th Cong. (As passed by House, March 11, 2021). <https://www.congress.gov/bill/117th-congress/house-bill/8>

⁴⁸ Blake, A. (2013, April 17). Manchin-Toomey gun amendment fails. *The Washington Post*. <https://www.washingtonpost.com/news/post-politics/wp/2013/04/17/manchin-toomey-gun-amendment-fails>

⁴⁹ Plumer, B. (2013, April 17). Senate bill to extend background checks killed by filibuster. *The Washington Post*. <https://www.washingtonpost.com/news/wonk/wp/2013/04/17/senate-bill-to-extend-gun-background-checks-killed-by-filibuster>

⁵⁰ Everett, B., & Kim, S. M. (2015, December 3). *Gun measures fail in Senate*. Politico. <https://www.politico.com/story/2015/12/gun-amendment-democrats-216389>

⁵¹ Moore, D. (2019, August 7). Toomey: Background check bill still lacks votes to pass U.S. Senate. *Pittsburgh Post-Gazette*. <https://www.post-gazette.com/news/politics-nation/2019/08/05/Dayton-El-Paso-shootings-renewed-calls-background-checks-bill-toomey-manchin/stories/201908050088>

⁵² Giffords Law Center. (2021). *Trafficking & Straw Purchasing*. <https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/trafficking-straw-purchasing/>

⁵³ Stop Illegal Trafficking in Firearms Act of 2017, S.1185, 115th Cong. (As introduced into Senate, May 18, 2017). <https://www.congress.gov/bill/115th-congress/senate-bill/1185>

⁵⁴ Suplina, N., Keller, L., & McCarron, M. (2016). *Target on Trafficking: New York Crime Gun Analysis*. Office of the Attorney General. <https://targettrafficking.ag.ny.gov/>

⁵⁵ An Amendment S.Amdt.713 to the Safe Communities, Safe Schools Act of 2013, S.647, 113th Cong. (As failed in the Senate, April 17, 2013). <https://www.congress.gov/amendment/113th-congress/senate-amendment/713>;

Stop Illegal Trafficking in Firearms Act of 2016, S.2544, 114th Cong. (As introduced into Senate, February 11, 2016). <https://www.congress.gov/bill/114th-congress/senate-bill/2544>;

Stop Illegal Trafficking in Firearms Act of 2017, S.1185, 115th Cong. (As introduced into Senate, May 18, 2017). <https://www.congress.gov/bill/115th-congress/senate-bill/1185>;

Stop Illegal Trafficking in Firearms Act of 2019, S.2376, 116th Cong. (As introduced into Senate, July 31, 2019). <https://www.congress.gov/bill/116th-congress/senate-bill/2376>

Assault weapons and high-capacity magazine ban

An analysis by Everytown for Gun Safety revealed that, from 2009 to 2018, mass shootings involving assault weapons resulted in six times the number of people shot compared to incidents in which other firearms were used, and shootings involving high-capacity magazines led to five times as many people shot.⁵⁶ There's a growing consensus among researchers that regulations on magazine size are effective in reducing gun violence: States that have these types of restrictions experience mass shootings at less than half the rate of those without restrictions.⁵⁷ Another study estimated that, when the 1994 Federal Assault Weapons Ban was in place, mass shooting deaths were 70 percent less likely to occur.⁵⁸

The Federal Assault Weapons Ban provision lasted 10 years, but in 2004, Congress failed to renew it.⁵⁹ Despite the fact that the ban had already been in place for 10 years, the efforts at renewing it in 2004 never even made it out of committee due to lack of Republican support.⁶⁰ While 60 votes had been achievable a decade earlier, that was no longer the case in 2004. Since that failure, Sen. Feinstein and other lawmakers have led the charge to reinstate similar legislation to fill this gap in protection to no avail.

These efforts were renewed in 2013 when Democratic leadership introduced a large-scale gun violence prevention bill in response to the shooting at Sandy Hook. Sen. Feinstein reintroduced an assault weapons ban as an amendment to the bill and Senators Frank Lautenberg (D-NJ) and Richard Blumenthal (D-CT) proposed an amendment that would have banned high-capacity magazines.⁶¹ Both amendments were excluded from the larger Senate bill due to expectations from Democratic leadership that they would not clear the filibuster.⁶² Despite these concessions, the entire bill was ultimately tabled after Republicans signaled that it also would not overcome a filibuster. When announcing that Senate Democrats were moving past the bill after all attempts at compromise failed, then-Senate Majority Leader Reid lamented that “the families of gun violence victims watched as Republicans...once again filibustered a common-sense proposal.”⁶³

“The families of gun violence victims watched as Republicans...once again filibustered a common-sense proposal.”

Popular, necessary, and life-saving legislation will not pass unless we eliminate the filibuster.

Every day in the United States, on average, 100 lives are cut short by a gun.⁶⁴ But it doesn't have to be this way; we know exactly what it takes to interrupt this pattern. Common-sense gun violence prevention legislation is popular among all Americans, and it's nothing new – we've had these measures in place before, and they worked. Today, though, Senate Republicans' use of the filibuster leaves the rest of us narrowing our legislative imagination, thinking in terms of concessions and sacrifices. As gun violence

⁵⁶ Everytown for Gun Safety. (2020). *Mass Shootings in America*.

⁵⁷ Petulla, S. (2017, October 5). *Here is one correlation between state gun laws and mass shootings*. CNN. <https://edition.cnn.com/2017/10/05/politics/gun-laws-magazines-las-vegas/index.html>

⁵⁸ DiMaggio, C., Avraham, J., Berry, C., Bukur, M., Feldman, J., Klein, M., Shah, N., Tandon, M., & Frangos, S. (2019). Changes in US mass shooting deaths associated with the 1994–2004 federal assault weapons ban: Analysis of open-source data. *Journal of Trauma and Acute Care Surgery*, 86(1), 11–19. <https://doi.org/10.1097/ta.0000000000002060>

⁵⁹ Elving, R. (2019, August 13). *The U.S. Once Had A Ban On Assault Weapons – Why Did It Expire?* NPR. <https://www.npr.org/2019/08/13/750656174/the-u-s-once-had-a-ban-on-assault-weapons-why-did-it-expire>

⁶⁰ Assault Weapons Ban Reauthorization Act of 2003, S.1034, 108th Cong. (As introduced into Senate, May 8, 2003). <https://www.congress.gov/bill/108th-congress/senate-bill/1034>;

Assault Weapons Ban Reauthorization Act of 2004, S.2109, 108th Cong. (As introduced into Senate, February 24, 2004). <https://www.congress.gov/bill/108th-congress/senate-bill/2109>;

Assault Weapons Ban Reauthorization Act of 2005, S.620, 109th Cong. (As introduced into Senate, March 14, 2005). <https://www.congress.gov/bill/109th-congress/senate-bill/620>

⁶¹ Wing, N. (2013, January 22). *Frank Lautenberg High-Capacity Magazine Ban Introduced On First Day Of Senate Session*. HuffPost. https://www.huffpost.com/entry/frank-lautenberg-high-capacity-magazine_n_2526924;

Brady United. (2019). *What are Assault Weapons and High-Capacity Magazines?* <https://www.bradyunited.org/fact-sheets/what-are-assault-weapons-and-high-capacity-magazines>. High capacity magazines can be attached to assault weapons to allow them to fire more rounds faster.

⁶² Steinhauer, J. (2013, March 19). *Senate Gun Bill Will Exclude Assault Weapons Ban*. *The New York Times*. <https://www.nytimes.com/2013/03/20/us/politics/senate-gun-bill-will-exclude-assault-weapons-ban.html>

⁶³ Cox, R. (2013, April 18). *Reid tables gun control bill after defeat on background checks*. The Hill. <https://thehill.com/blogs/floor-action/senate/294835-reid-tables-gun-control-bill-after-defeat-on-background-checks-amendment>

⁶⁴ Brady United. (2019). *Key Statistics*. <https://www.bradyunited.org/key-statistics>

prevention advocates like Po Murray, the Chairperson of the Newtown Action Alliance, know too well, even the 2013 Manchin-Toomey proposal was a watered-down compromise that would have resulted in gun violence prevention laws that were only slightly stronger than they'd been before.⁶⁵ Approaches such as increasing community-led interventions and investing in community organizers need to be prioritized, but these types of proposals are very unlikely to be introduced – let alone make it to the president's desk – unless we remove the threat of the filibuster. Until then, people across the country will continue to die needlessly because Mitch McConnell and Senate Republicans have been allowed to obstruct any and all gun violence prevention legislation.

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Already, the 117th Democratic-controlled Congress has introduced two gun violence prevention bills: H.R.8, the Bipartisan Background Checks Act of 2021, and H.R.1446, the Enhanced Background Checks Act of 2021.⁶⁶ They also introduced H.R.1280, The George Floyd Justice in Policing Act, to try to begin to dismantle some of the inequities that exist within our policing systems that contribute to the needless death of Black men in particular.⁶⁷ All three bills passed the House in February and March 2021 – H.R.8 in a bipartisan vote – but none stands a chance at passing the Senate while the filibuster is in place.⁶⁸

The policy proposals mentioned in this brief – universal background checks, bills addressing gun trafficking, bans on assault weapons and high-capacity magazines – along with the proposals introduced in the current Congress will remain in legislative purgatory unless we eliminate the one thing standing in their way – the filibuster.

Rampant abuse of the filibuster to prevent common-sense gun violence prevention proposals from becoming law – despite bipartisan support and universal popularity – echoes the instances of the use of the filibuster from the first half of the 20th century, when popular anti-lynching was repeatedly stymied by racist politicians. Today, Black Americans are disproportionately impacted by gun violence, but the same arcane Senate rule that prevented the passage of anti-lynching legislation for over a century continues to impose excessive burdens on meaningful legislative solutions.

Speaking at a presidential forum in January 2020, Senator Elizabeth Warren (D-MA) summarized the future of gun violence prevention: “As long as we have a filibuster in the United States Senate, that means it’s going to be a 60-vote threshold for anything we want to get done, and that effectively means that the gun industry has a veto.”⁶⁹ It’s time to revoke that veto and allow our lawmakers to act on the mandate given to them by voters to finally address this fatal issue.

Eliminating the filibuster is not an escalation of partisan tactics. It is not a short-sighted move that begs political retribution the next time Democrats are in the minority. It is a recognition from those most involved in the fight for progress, past and present, that the filibuster is a bulwark against liberty. Our elected lawmakers know that giving a superminority the ability to block legislation is a major impediment to achieving a country that is free from gun violence.

⁶⁵ Murray, P. (2021, March 23). *Opinion: What has to happen after the Colorado killings*. CNN. <https://edition.cnn.com/2021/03/23/opinions/colorado-killings-gun-control-filibuster-opinion-murray/index.html>

⁶⁶ Bipartisan Background Checks Act of 2021, H.R.8, 117th Cong. (As passed by House, March 11, 2021). <https://www.congress.gov/bill/117th-congress/house-bill/8>;

Enhanced Background Checks Act of 2021, H.R.1446, 117th Cong. (As passed by House, March 1, 2021). <https://www.congress.gov/bill/117th-congress/house-bill/1446>

⁶⁷ George Floyd Justice in Policing Act of 2021, H.R.1280, 117th Cong. (As passed by House, February 24, 2021). <https://www.congress.gov/bill/117th-congress/house-bill/1280>

⁶⁸ Cowan, R. (2021, March 11). *U.S. House passes two Democratic-backed gun control bills*. Reuters. <https://www.reuters.com/article/us-usa-congress-guns/u-s-house-passes-two-democratic-backed-gun-control-bills-idUSKBN2B32MA>

⁶⁹ Brady United. (2020, September 25). *Elizabeth Warren on Ending the Filibuster* [Video]. YouTube. <https://www.youtube.com/watch?v=AOhbz1h1Knk>