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Filibuster Fight in U.S. Senate Could Threaten Wall Street's Agenda

The current debate in the U.S. Senate over whether filibusters should be allowed to stall judicial nominations – a controversy that may come to a head in the next few weeks – could have a serious effect on the initiatives that the financial community is hoping Congress will consider the rest of this year.

If Democrats carry through on their threat to prevent the Senate from considering all other legislation because Majority Leader Bill Frist (R-TN) implements the so-called “nuclear option” – that is, if he rules that filibusters are not allowed when judicial nominations are considered – the consequences for Wall Street and other major sectors of the U.S. economy could be significantly negative.

What is a “Filibuster”?

Filibusters started in the United States in 1841, when the Democratic minority wanted to block a banking bill by keeping debate going and preventing other business from coming to the Senate floor. This use of extended debate remained the custom until 1917, when President Woodrow Wilson recommended that the Senate adopt Rule 22, which allowed the Senate to end a debate with a two-thirds majority – a tactic known as “cloture.” The requirement for invoking cloture was later changed from two-thirds to 60 votes. Over the years, filibusters have been used by both Republicans and Democrats, and many have been quite

famous and infamous. Senator Huey Long (D-LA) effectively filibustered bills that he thought favored the rich over the poor, delaying other Senate action by quoting Shakespeare for hours. Strom Thurmond (at the time, D-SC) filibustered for more than twenty-four hours against the Civil Rights Act of 1957.

The Frist “Nuclear Option”

Majority Leader Frist's plan would disallow filibusters by any senator who questions or opposes a judicial nomination. The practical result of this change would be that nominations, which now need 60 votes to overcome a filibuster by invoking cloture, would only need a simple majority. Because Republicans now have a 55-44-1 majority, this would make it far more likely that President Bush's judicial nominees would be approved.

Democrats are arguing that the rights traditionally accorded to the minority, as well as more than 160 years of Senate tradition, would be trampled by the nuclear option. Minority Leader Harry Reid (D-NV) has said that he and his colleagues will take advantage of other Senate rules to prevent anything else from being considered this year if Frist is successful. This is possible because the Senate operates with “unanimous consent” agreements: ad hoc arrangements for every bill and motion that require every senator to go along. Just one senator objecting on the floor to anything – such as debating a particular

The U.S. Senate Filibuster Fight

What's at Stake?

bill, moving from debate to a vote, dispensing with the reading of the previous day's Congressional Record, allowing committees to meet while the full Senate is in session, etc. – stops it from happening.

The Reid response to the Frist plan would mean that nothing but the most critical legislation, such as an increase in the federal debt ceiling when the government runs out of borrowing authority, would probably be approved this year.

Wall Street as a Great Deal at Stake

Wall Street has a number of initiatives pending on Capitol Hill and is hoping for congressional action on several fronts.

This includes:

- Tax reform
- Additional tax cuts
- Extension of expiring tax cuts
- Funding for new highway projects
- Reversing the recent SEC decision on "Regulation NMS"
- Quashing the new SEC rule on "independent board chairmen" of mutual funds
- Sarbanes-Oxley revisions

An increase in the federal debt ceiling Other major pieces of legislation, many of which are also of interest to Wall Street, include Social Security, energy legislation, food and drug regulations, farm subsidies, the federal budget, defense, and housing regulations. All of these policies could be problematic for the Republican-led Congress and Bush administration if the Senate grinds to a halt.

Outlook

The vote on implementing the nuclear option is likely to be very close.

It is safe to assume that all 44 Democrats and Senator Jim Jeffords (I-VT) will vote against the Frist plan, so there are 45 certain "No" votes. Senator John McCain (R-AZ) has already announced his opposition to the Frist plan, and three other Republicans are expected soon to do the same.

That means that the fate of the nuclear option, and much of Wall Street's political agenda, rests in the hands of the four Republican senators who have yet to make their intentions known.



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