Pending favorable final negotiations, it appears that, at long last, Pres. Obama will be able to sign a health care bill. But, as the Senate's agonizing legislative machinations revealed, democratic governance sits at a crossroads, and the elephant in the road -- or donkey, if you prefer -- is the Senate filibuster.

The underlying problem with the filibuster is not that it very nearly derailed health care, but that it stalls -- and makes worse -- nearly every major bill in the Senate. For most of American history, filibusters were rare: before 1917, when unanimous consent was required to invoke cloture (the procedure to end debate), filibusters were extremely rare -- on average, one every few years. From 1917 to 1975, when the filibuster-ending vote threshold was two-thirds, not the current three-fifths, the Senate averaged less than one per year. In the 1960s, Southern senators trying to block civil rights legislation upped the average to two per year.

When the Democrats instituted the legislative tracking system in the 1960s, allowing for consideration of multiple bills in succession, the pain of the filibuster was largely eliminated, since a filibuster of one bill no longer blocked consideration of other legislation. By the 1980s, the number of cloture votes was fourteen per year; in the 1990s, it jumped to twenty-five per year, and in this decade, thirty-five per year. Sen. Sheldon Whitehouse noted ruefully this week that, in 2009 alone, the Senate had "crossed the mark of over 100 filibusters." A filibuster of health care was expected -- but was it really necessary for bills like the Craig Thomas Snake Headwaters Legacy Act? And these numbers underestimate the filibuster's impact because they do not include filibuster threats and filibusters resolved prior to cloture votes.

As congressional expert David Mayhew has concluded, the Senate has never faced "any anti-majoritarian barrier as concrete, as decisive, or as consequential as today's rule of 60." Add to this the facts that senators represent geography, not people; the hyper-partisanship that dominates politics; and (even with current Democratic majorities) the relative parity between the parties, and the result is governance nearly coming off its rails.

Although defenders of the status quo note George Washington's homily that "we pour legislation into the senatorial saucer to cool it," it is difficult to imagine that Washington or James Madison would be sanguine about the unprecedentedly prolific use of a tactic that didn't even appear until fifty years after the Constitution was written.

To liberate a U.S. Senate now in the thrall of the uber-dilatory filibuster, we propose as a first step, in this age of legislative incrementalism, that reformers constitute a new "Gang of 14," modeled after the group of seven Democrats and seven Republicans that combined in 2005 to stave off the so-called "nuclear option" in the Senate (a plan to rule any filibuster of a judicial nominee to be out of order). Those fourteen pledged not to filibuster judicial nominees except under "extraordinary circumstances." In this instance, we urge that they pledge to embrace the "extraordinary circumstances" principle now, applied to regular legislation, beginning on January 1, 2013 -- a point far enough ahead that the chamber's party control is beyond prediction.

The Senate should improve its own health care now by containing and contracting this pre-existing (filibuster)
condition. Let's not take a pass on this particular public option.

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