

Opinion

Jim Hunt: What you need to know about the filibuster

BY JIM MARTIN



Recently, attention was drawn to one of those antique curiosities of American government that few understand and fewer support: the Senate "filibuster."

Last week, Vice President Kamala Harris proposed to amend the Senate's filibuster rule so it couldn't obstruct passage of her most effective policy issue versus former President Donald Trump. She wants federal laws restoring the principles of *Roe v. Wade* to allow abortion in all 50 states. Whether it would

provide an absolute "right to choose," with no limitation on late-term abortion, is unclear.

In 2022, three Supreme Court Justices appointed by Trump enabled a 5-4 vote to overturn *Roe v. Wade*, holding that abortion was not a right protected in the Constitution, leaving it to political processes in states. This reversed a 1973 Supreme Court finding (7-2) that criminalizing abortion violated an implied protection in the "due process" clause of the Fourteenth Amendment. This controversy disturbs many on each side, while moderates prefer compromise.

Which brings us back to the filibuster. A quick history lesson: the filibuster dates back to 1837 when Senate Whigs

blocked a vote to erase their earlier censure of President Andrew Jackson, a Democrat. Their blocking tactic: continual debate until Jackson's allies gave up.

The Senate originally had a parliamentary procedure for "Moving the Previous Question" to close debate (aka "Cloture"), but dropped it in 1806, as it was rarely used. House Rules allow the Previous Question as a privileged motion, closing debate by a simple majority. After two centuries of fine tuning, Senate filibusters no longer depend on one senator holding the floor until he collapses. Today, 60 votes are required for Senate cloture to keep the people's business moving along.

Disappointed advocates

usually blame the filibuster rule when their most-hallowed legislative objectives are stymied for lack of 60 Senators voting in favor.

The opposing view treasures the filibuster as often the only way to prevent radical policies from becoming law without bipartisan input.

The objection is that the filibuster thwarts democracy. While the Declaration of Independence didn't call for a pure democracy, some wish it did. Instead, it proposed that governments be established "deriving their just powers from the consent of the governed." When asked about the new government, Benjamin Franklin described a representative democracy saying, "a republic, if you can keep it."

The U.S. Constitution provides only that "The

United States shall guarantee to every State in this Union a Republican Form of Government." Filibusters aren't prohibited or protected.

In defense of the filibuster, Sen. Joe Manchin (I-WV) called it "the Holy Grail of Democracy." That may be rhetorical excess, but the filibuster is clearly a barrier to passage of controversial laws with little or no input from the minority. With the two major parties so badly polarized, it might be a risky time to abandon the filibuster. If either party controlled both legislative bodies and the presidency, 60 votes for cloture would be the only thing left to favor compromise over radical ideology.

Can the filibuster be set aside for one specific proposal? Yes, with a majority vote at the opening of a new Congress to adopt a carefully crafted rule for that purpose alone. Would this set a precedent for waiving the filibuster for other issues? Yes, and

that's the danger.

As recently as 2013, Senate Democrats amended cloture to allow a simple majority to confirm President Obama's nominations of cabinet executives and all federal judges except the Supreme Court. In

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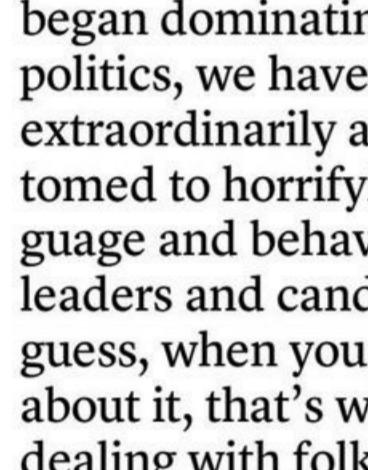
2017, when Trump became President, a Republican Senate majority extended this precedent to include confirmation of Supreme Court nominees. Each side shamed the other as "hypocrites." The rest is history.

So, it can be done, as it was for key presidential appointments only. The question today is whether to open the Senate to decide abortion and other highly controversial policies by a simple majority of Democrats (or Republicans). Once released again, it may be impossible to put this genie back in its bottle.

Jim Martin, a Republican, was N.C. governor from 1985-93. He is a regular contributor to our pages.

A reminder of Trump's most damning words

BY GENE NICHOL



Since Donald Trump began dominating our politics, we have gotten extraordinarily accustomed to horrifying language and behavior by leaders and candidates. I'd guess, when you think about it, that's why we're dealing with folks like Mark Robinson and Michelle Morrow these days in North Carolina.

We've come to think it normal to consider selecting folks to important offices who we would never tolerate where we work, where we worship, or where we learn. Think of Robinson's quote "some folks need killing," or Morrow saying Obama should be put before "a firing squad" on "pay-per-view". (It's hard to actually type out what we seem to have become.)

All that said, even if this is what we've been reduced to, as we approach the presidential election, I wanted to remind people of one set of Trump interactions.

During a phone call on January 2, 2021, Trump asked Georgia Republican Secretary of State Brad Raffensperger to "find votes" so he could overturn the state's election in his favor.

"All I want to do is this. I just want to find 11,780 votes, which is one more than we have ... Fellas, I need 11,000 votes. Give me a break."

Later in the call, he suggested Raffensperger would face legal trouble if he didn't play along.

Let that sink in. Or re-sink in.

There's no doubt the conversation happened. It's on tape. There's no doubt what Trump was trying to do. No doubt he attempted to do it. All other transgressions aside — and there are admittedly tons of them — this single, undeniable, absolutely-proven set of utterances conclusively demonstrates that Donald Trump should

be in the penitentiary, not the White House. That, simply put, cannot be denied.

The Raffensperger call proves some other things too.

It proves our legal system has stunningly failed us. Both the federal special prosecutor and the Fulton County prosecutions have been delayed or blocked. And, in this instance, justice delayed is, literally, denied. The American "rule of law" has been unceremoniously defeated.

It proves, also, that the hapless and fearful U.S.

Attorney General Merrick Garland has been unwilling, and unable, flatly, to do his duty. It's been clear, from the first, he never would. He didn't want to make anyone mad. The Georgia call could have been prosecuted almost immediately. It should have been. Must have been. When Garland refused to obey his oath, he should have been fired. Biden, too, failed to "take care" that the laws be executed. He didn't have the stomach for it. He hoped Trump would just disappear. Biden pretended he could stay above the fray. Not in these times. So here we are.

Then there are the Republicans. Good God.

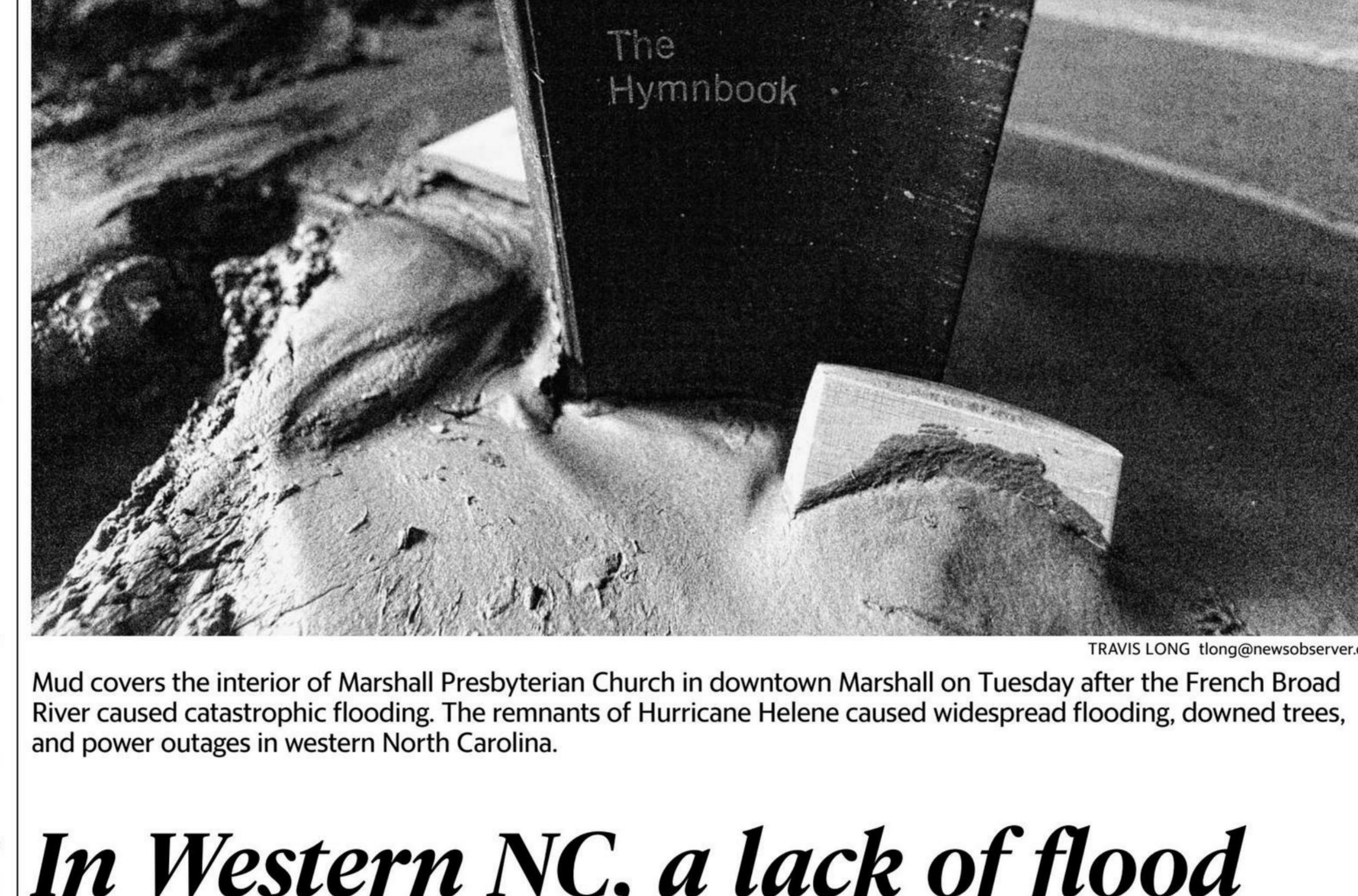
Their senators voted, overwhelmingly, to acquit Trump in impeachment. As a party, Republicans have fallen into place, by astonishing margins, embracing a man who has committed blatant, disloyal sedition without even denying it. The Republicans murmur and avert their eyes. They can't be expected to stand against anything. Even rank, democracy-destroying criminality. They don't even consider it. Especially the religious ones.

This is where we are. It is, I'll concede, grotesque. No single excuse can justify it. No single vote for Trump is anything other than an abandonment of character and patriotism. Not a single one.

We have fallen far. But this far?

Contributing columnist

Gene Nichol is a professor of law at the University of North Carolina-Chapel Hill.



Mud covers the interior of Marshall Presbyterian Church in downtown Marshall on Tuesday after the French Broad River caused catastrophic flooding. The remnants of Hurricane Helene caused widespread flooding, downed trees, and power outages in western North Carolina.

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In Western NC, a lack of flood insurance deepens the damage

BY NED BARNETT

For western North Carolina, Hurricane Helene brought a flooding disaster

Next comes an insurance disaster.

Residents in North Carolina's mountains have felt secure from the flooding that increasingly swamps the state's low-lying coastal plain. But when Hurricane Helene — along with Hurricane Ida — dropped more than 40 trillion gallons of water on the region, that security was washed away.

Now, homeowners in the state's mountain counties are learning that their homeowner's insurance doesn't cover flooding, landslides or anything else caused by moving water.

Many will wish they had paid for policies through the National Flood Insurance Program (NFIP).

State Sen. Natasha Marcus, the Democratic nominee for state insurance commissioner, said there are less than 6,000 NFIP policies in the western North Carolina disaster area. In Buncombe County, home of hard-hit Asheville, she said, less than 1% of the county's 137,000 housing units have flood insurance.

Marcus said the hurricane's destruction "really drives home what is happening with the changes in our climate. It's just a startling reminder that it is real and how exposed we are. Of course, now it's too late to get flood insurance.

So I'm very worried about how we are going to rebuild western North Carolina."

It's understandable that homeowners in high elevations didn't regard massive flooding as a likely threat. The last event to approach Helene's magnitude in western North Carolina was more than 100 years ago — the great flood of 1916.

But climate change is making flooding more frequent as storms developing over warming seas carry more moisture inland. The North Carolina State Climate Office blog said the rainfall during Helene and a preceding storm dwarfed historic standards: "In Asheville, the three-day total of almost 14 inches goes well beyond the 1-in-1,000 year total for a 72-hour period. ... Likewise, the 24.41 inches over three days at Mount Mitchell is off the charts compared to the 1-in-1,000 year amount of 16.5 inches."

Lack of flood insurance is a problem even where floods are common. State Insurance Commissioner Mike Causey told me that when Hurricane Florence engulfed parts of eastern North Carolina in 2018, only 2 percent of the damaged homes were covered by flood insurance.

"It is a huge problem," Causey said. "We had flood education classes around the state in 2019. That education effort increased the number of flood policies by 25 percent, but we are still just scratching the surface."

Hurricane Helene has added intensity to the contest between Causey, a Republican, and Marcus in the insurance commissioner's race.

Causey supports adopting a statewide version of a coastal program that serves as a market of last resort for vulnerable properties. He also wants to increase participation in the state fortified roof program.

Marcus says North Carolina's insurance commissioner should be a stronger advocate for adopting building code and infrastructure changes and making people more aware when they are buying in flood-prone areas by

updating flood maps.

"Unfortunately, efforts to modernize these maps have been stalled by political gridlock, leaving communities unprepared for the realities of our changing climate," she said.

Days before Hurricane Helene made landfall, three beachfront houses fell into the ocean in Rodanthe. It's a far different place than Asheville, but it's the same phenomenon. The climate is changing. So are the risks.

Yet at a time when climate hazards are rising, more people are moving into areas vulnerable to floods, winds and wildfires. That development drives up the cost — both in human life and in property — of natural disasters.

It's time for sane development and construction laws that acknowledge the threat of climate change. It's past time to reduce the risks by barring development in flood-prone areas, improving building codes to better withstand storms and encouraging the purchase of flood insurance across the state.

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