



Myth vs. Fact: Ending Gridlock in the Senate

MYTH: Leader Reid is breaking the rules of the Senate in order to change the rules of the Senate.

FACT: The rules of the Senate can be changed by a simple majority of Senators.

Under the Constitution, the House and Senate are each given the authority to make their own rules. There are a variety of methods the Senate can choose to change or amend its rules, including by making rulings that need the support of a simple majority to take effect.

Key Facts:

- The Constitution grants authority to the Senate to determine its rules. If a simple majority of voting senators support upholding or overturning the presiding officer's interpretation of a rule, then the result becomes binding precedent. [CRS, [1/22/13](#)]
- On four separate occasions during his tenure, Majority Leader Byrd made changes to Senate procedure by either simple majority or via potential use of the option. These changes helped end gridlock and helped make the Senate function more effectively. [[28 Harv. J.L. & Pub. Pol'y 206](#) (2004)]
 - In 1977 Majority Leader Byrd led a majority of senators in changing the interpretation of the rules to prevent post-cloture filibusters. [123 Congress Rec. 31916 - 31920]
 - In 1979 Majority Leader Byrd led a simple majority of Senators present (mere plurality of the whole) in changing the interpretation of the rules to limit amendments to appropriations bills. [96th Congress, 2nd Session, Vote #399 (44 – 40)]
 - In 1980 Majority Leader Byrd led a simple majority in changing the interpretation of the rules so that the Senate can take up a nomination without debate. [96th Congress, 2nd Session, Vote #55 (38 – 54)]
 - In 1987 Majority Leader Byrd led a simple majority in changing the interpretation of the rules regarding voting procedure. [100th Congress, 1st Session, Vote #108 (46 – 54)]

MYTH: President Obama is getting as many, if not more, of his judicial nominees confirmed as did President Bush.

FACT: Republicans have used unprecedented levels of obstruction to block President Obama's judicial nominees.

In the face of Republican-created gridlock, fewer of President Obama's judicial nominees have been confirmed than under President Bush, and those that have been confirmed have faced much longer delays.

Key Facts:

- Republicans have made unprecedented use of the filibuster to block and delay President Obama's judicial nominees. In just five years, nearly twice as many of President Obama's judicial nominees have faced cloture than President Bush's did over the course of his full eight years in office. [CRS, [6/26/13](#); CRS, [11/18/13](#)]
- Those nominees that have been confirmed have faced significantly longer delays. During President Bush's first term the median Senate floor wait time was 35 days for circuit court nominees and 18 days for district court nominees. Those numbers skyrocketed during President Obama's first term to 138 days for circuit court nominees and 91 days for district nominees. [CRS, [5/2/13](#)]
- Not only are wait times longer, they are more common. During their first terms, 78% of President Obama's district court nominees waited more than 60 days on the Senate floor for confirmation, compared to just 15% for President Bush. While 60% of President Bush's circuit court nominees were confirmed within 30 days, 80% of President Obama's nominees waited more than 90 days. [Information compiled by CRS for Senate Judiciary Committee]

MYTH: There isn't a high enough caseload to warrant more confirmations to the D.C. Circuit Court of Appeals.

FACT: The caseload facing the D.C. Circuit Court of Appeals is on par with historical standards, and higher than when Republicans supported President Bush's nominees to fill vacant seats.

President Obama is fulfilling his constitutional responsibility by nominating qualified individuals to fill open seats. It's Republicans who are playing political games with the size of the court by attempting to effectively eliminate three seats.

Key Facts:

- Republican concerns over the D.C. Circuit's caseload are a recent development under the Obama Administration. For example, Republicans were willing to block Patricia Millett's nomination to the D.C. Circuit despite the fact that the caseload per judge currently stands at 185. However, they had no reservations about confirming John Roberts in 2003 when the caseload per judge was one-third lower, at 125. [U.S. Courts data compiled by Senate Judiciary Committee]

- Republicans apply different standards to the D.C. Circuit depending on whether or not they control the White House. Under Republican presidents, Republicans have been willing to fill the 11th seat on the D.C. Circuit with judges like Antonin Scalia and Kenneth Starr. However, under President Obama they view these 9th through 11th seats on the court as unnecessary, despite an elevated caseload.
- For example, there are currently nearly 1,500 cases pending before the D.C. Circuit Court of Appeals and its eight judges. However, in 2005 Republicans supported confirming a 10th and 11th judge with just over 1,300 cases pending, and in 2003 even supported filling those seats while the caseload was less than 1,000. [PFAW, [11/14/13](#)]
- Republicans also attempt to distort the facts about the D.C. Circuit Court of Appeals caseload by making apples to oranges comparisons to other courts. Because the D.C. Circuit handles a disproportionately high number of administrative appeals and complex federal issues, even conservative legal experts have noted that its caseload must be evaluated on its own merits. Judge Timothy Tymkovich, a Bush appointee and chair of the Federal Judiciary's Committee on Judiciary Resources has noted that, "historically, those types of cases have driven a more complex and difficult evaluation." During the term ending in 2012, over 40% of the D.C. Circuit's cases involved a federal agency, compared to less than 14% on the remaining circuits. [Testimony of Judge Tymkovich, [9/10/13](#); Dissent, [5/26/13](#)]
- The D.C. Circuit Court of Appeals is currently tilted toward Republican nominees. Of the last 19 D.C. Circuit Judges, 15 were nominated by Republican presidents, including five of six senior judges. [AFJ; Dissent, [5/26/13](#)]

MYTH: The President has had over 1,500 of his executive nominations confirmed, and he's getting them faster than President Bush was at the same time in his second term.

FACT: President Obama is on track to face more filibusters on executive nominations than every other President combined.

President Obama has already faced filibusters of 27 executive nominees. In the entire history of the country before 2008 there have only been 20 filibuster votes on executive nominees. Republicans are trying to conflate executive branch nominations with judicial branch nominations to create a false impression of progress. When considered independently, both point to unprecedented delay by Republicans. [People for the American Way, [11/18/13](#)]

Key Facts:

- The Senate confirmed only 34 executive nominees by the July 4th recess, compared to 118 at the same point in the Bush Administration. In fact, so far this year the Senate has only confirmed 175 executive nominees (42.3%) compared to 289 (66.9%) during the first year of President Bush's second term. There are a total of 178 pending executive nominees.
- During the 111th and 112th Congresses, President Obama's executive branch nominees waited 34% and 21% longer on average, respectively, for confirmation than President George W. Bush's nominees. [CRS, [7/3/13](#)]

- According to the independent Congressional Research Service (CRS), during the eight years of George W. Bush's presidency, there were only 15 executive nominations on which cloture was filed. Under President Obama, Republican obstruction has already forced cloture petitions on 43 of President Obama's executive branch nominees to date. [CRS, [6/26/13](#); CRS, [11/18/13](#)]
- Overall use of the filibuster has skyrocketed. In his six years as Majority Leader, Senator Lyndon B. Johnson faced one filibuster. Since Democrats have been in the majority, we have faced 446 filibusters. [[U.S. Senate](#)]