



Minority Rules

Ten Ways to Bring the Senate to Its Knees

Ian Millhiser | September 29, 2010

When you consider its big ticket achievements, the current 111th Congress is one of the most successful in American history. Two Supreme Court justices, long-overdue financial reform, a stimulus package that pulled the economy from the brink of disaster, and a landmark law bringing affordable health care to all Americans are nothing to sneeze at.

Yet beneath these most visible achievements is a far different story. The Senate can confirm two highly-visible Supreme Court justices, but it can't confirm more than a handful of President Obama's lower court nominees. The Senate can overcome virulent objections to its most high profile bills, but it has yet to even take a vote on 372 bills that already passed the House—many of them unanimously.

There's a simple reason for this disparity. It may only take 60 votes to get something accomplished in the Senate, but it takes 100 votes to do so quickly. Senators who want to block progress can force hours of irrelevant debate. Or they can gum up the works with extraneous amendments. Or they can force lengthy amendments to be read aloud. Or they can demand time-consuming roll call votes on frivolous procedural objections. And with each minute wasted, the clock ticks closer and closer to the end of the 111th Congress in January.

Let's be clear—the level of obstruction in today's Senate is unprecedented. But obstruction and delay is cooked deep into the Senate's meat. Indeed, there are so many ways to shut down business in the Senate—many of which can be implemented by one lone senator—that the real surprise is that the Senate has ever accomplished anything. There are many more ways to block progress in the Senate than this brief paper can detail, but here is a short list of ten ways to bring the Senate to its knees.

Obstruction tactic No. 1—endless debate

The word “debate” does not mean much in the United States Senate. Rather than being a free exchange of ideas intended to convince other senators of one position or another, most Senate debate time is occupied by senators giving closely-vetted speeches to an almost-entirely empty chamber. Nevertheless, the Senate rules make it very difficult to stop the serial speeches and actually hold a vote. Unless at least 60 senators agree to hold a vote, the speeches go on forever. A “filibuster” is nothing more than a senator’s decision to prevent the Senate from holding a vote on a particular issue until 60 of their colleagues finally tell them “no.”

Obstruction tactic No. 2—endless debate over whether to debate

Not only can senators use the filibuster to force endless debate, they can also use it to prevent debate from starting in the first place. Before the Senate can begin debate on most legislation, the senators must either unanimously agree to consider it or the majority leader must offer a “motion to proceed” to consideration of that bill. This motion can be filibustered. Thus, for almost all bills, dissenting senators have at least two opportunities to filibuster, once to prevent debate from starting and another time to prevent it from ending.¹

Obstruction tactic No. 3—endless debate over whether to negotiate

If the House and Senate pass similar but not identical bills, the differences between the two bills generally are hashed out through a process known as a “conference committee” comprised of relevant members of the Senate and House of Representatives. Before these negotiations can begin, however, the Senate must pass three motions: a motion formally disagreeing with the House bill; a motion expressing the Senate’s desire to conference; and a motion enabling a small group of senators to be designated as negotiators. Each of these three motions can be filibustered.²

Obstruction tactic No. 4—forced debate on matters that have already been decided

Even when a filibuster is broken, the delay doesn’t end. Once 60 senators break a filibuster—a process known as “cloture”—the dissenters can still force up to 30 hours of post-cloture debate per broken filibuster.³ Thus, to pass a single bill, the

Senate may need to waste 30 hours after breaking the filibuster on the motion to proceed, another 30 hours after breaking the filibuster on the motion to end debate, and another 90 hours after breaking the three filibusters before the bill goes to conference committee. This adds up to nearly an entire week every time the Senate passes a single bill.

The picture for nominations is slightly less grim. Nominations are considered “executive business,” in the language of the Senate, and thus can be debated without giving the minority an opportunity to filibuster the motion to proceed.⁴ Likewise, because the Senate alone confirms nominees, there are no conference committees on nominations and thus no opportunities to filibuster negotiations with the House. Nevertheless, dissenting senators can still force up to 30 hours of time to be wasted before the Senate can confirm a nominee.

The ability to force post-cloture debate on a nomination is particularly unnecessary because these 30 hours ostensibly exist to allow additional amendments to be considered once the Senate agrees to end debate. Because nominations cannot be amended, it is unclear why post-cloture debate on nominations should even exist.

Moreover, 30 hours may not sound like a lot of time, but a president must fill approximately one thousand Senate confirmed jobs over the course of a presidential term. When you multiply 30 hours times all one thousand nominees, it adds up to more Senate work days than actually exists in two entire presidential terms.⁵

Obstruction tactic No. 5—secret holds

Because unanimous consent is required to avoid a filibuster and post-cloture debate, just one senator can place a “hold” on any senate business by indicating their willingness to withhold such consent. Worse, Senate customs have evolved to allow “secret holds,” where a senator tells his party leader to place the hold and the leader blocks progress on a matter without ever revealing which senator is responsible for this obstruction.⁶

Senators have long used holds to “take hostages.”⁷ Sen. Richard Shelby (R-AL), for example, recently placed a hold on over 70 nominees from the Obama administration in an attempt to force the federal government to award a \$35 billion defense contract to Northrop Grumman.⁸ Recently, however, senators have also begun to use these holds simply to prevent business from moving quickly on the Senate floor.

Obstruction tactic No. 6—forcing a roll call vote on everything

The Senate frequently uses relatively quick voice votes to conduct routine procedural business and move uncontroversial bills and nominations. The Constitution, however, permits just one fifth of the senators present for a vote to demand a much more time consuming roll call vote.⁹ By drawing out the time required for each vote, a small minority of the senators can gradually run down the Senate’s clock.

Obstruction tactic No. 7—frivolous points of order

The tactic of forcing time-consuming roll call votes works best when used in conjunction with another tactic to maximize the number of votes taken. One easy way a senator can force a large number of votes is by constantly raising “points of order” alleging that the majority’s actions violate the Senate rules.¹⁰ Although such points of order can eventually be “tabled” by a simple majority vote,¹¹ an obstructionist minority can still create significant delay by repeatedly forcing such votes and demanding that a roll call vote be taken, even if they are fully aware that their points of order lack merit.

Obstruction tactic No. 8—frivolous amendments

In most cases, any senator can offer any amendment to any bill under consideration, regardless of whether or not that amendment is germane to the underlying legislation.¹² Accordingly, senators can try to delay or block legislation by overwhelming the amendments process or by filing “poison pill” amendments, which are likely to pass but which also are likely to cause senators who would otherwise vote for the underlying bill to turn against it.

Admittedly, the majority leader is less defenseless against this tactic than they are against many other obstructionist ploys. Using a tactic known as “filling the amendment tree,” for example, the majority leader can effectively insist that majority-supported amendments are voted on first. Additionally, the leader can place a 30-hour time limit on obstructionism if 60 senators support cloture.

Obstruction tactic No. 9—reading amendments aloud

Even the majority leader’s own amendments, however, can become fodder for obstructionism. Unless every single senator agrees to dispense with this requirement, each amendment must be read aloud after a senator offers it.¹³ In some cases, these amendments can be hundreds of pages long and require many hours to finish reading.

Obstruction tactic No. 10—committee shenanigans

In addition to the minority’s immense power to delay progress on the Senate floor, each committee has its own set of rules which can be abused to prevent business from moving forward. Many committees, for example, require that a certain number of senators be present before a bill or nomination can be reported out of the committee. The Judiciary Committee’s rules even provide that “Eight Members of the Committee, including at least two Members of the minority, shall constitute a quorum for the purpose of transacting business.” Thus, it is possible for the minority to stall all business in that committee simply by refusing to show up for work.

The minority leader also has the power to completely shut down committees for most of every day that the Senate is in session. Under the Senate’s rules, “when the Senate is in session, no committee of the Senate or any subcommittee thereof may meet, without special leave, after the conclusion of the first two hours after the meeting of the Senate commenced and in no case after two o’clock postmeridian unless consent therefore has been obtained from the majority leader and the minority leader.”

Conclusion

Presently, a minority of senators are engaged in unprecedented obstructionism to block legislation and bring judicial confirmations to a crawl. They are able to do only because the Senate rules provide numerous opportunities for abuse. Dissenting senators can force days of pointless debate before a single vote can be cast. They can demand pointless rituals such as reading all amendments aloud. And they can bog down the Senate with time-consuming votes on frivolous objections. Indeed, with so many opportunities for abuse, the miracle of the United States Senate is that it has ever functioned at all.

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Endnotes

- 1 James V. Saturno, "How Measures Are Brought to the Senate Floor: A Brief Introduction" (Washington: Congressional Research Service, 2003), p. 3.
- 2 Elizabeth Rybicki, "Going to Conference in the Senate" (Washington: Congressional Research Service, 2007), p. 1–2.
- 3 Richard S. Beth and Stanley Bach, "Filibusters and Cloture in the Senate" (Washington: Congressional Research Service, 2003) p. 13.
- 4 Saturno, *supra* note 1, p. 5.
- 5 Ian Millhiser, "The Tyranny of the Timepiece" (Washington: Center For American Progress, 2010), p. 3.
- 6 Walter J. Oleszek, "Proposals to Reform "Holds" in the Senate" (Washington: Congressional Research Service, 2007) p.1.
- 7 *Ibid.* p. 2.
- 8 Tony Carrk, "The Policy Consequences of Senate Obstruction" (Washington: Center for American Progress Action Fund, 2010), p. 9.
- 9 Betsy Palmer and Stanley Bach, "Ordering a Roll Call Vote in the Senate" (Washington: Congressional Research Service, 2003) p. 1.
- 10 Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure*, 101 Cong., 2 sess., S. Doc. 101-28 (Government Printing Office, 1992), p. 1273.
- 11 *Ibid.* p. 1273–74.
- 12 Valerie Heitshusen, "The Legislative Process on the Senate Floor: An Introduction" (Washington: Congressional Research Service, 2008) p. 11–12.
- 13 *Ibid.* p. 11.