

Statement of Chairman Charles E. Schumer
U.S. Senate Committee on Rules and Administration
Hearing on “Examining the Filibuster: Silent Filibusters, Holds and the Senate Confirmation Process”
June 23, 2010

Good Morning. I would like to thank my friend, Ranking Member Bennett, and my other colleagues present for participating in this hearing on filibusters and the confirmation process. We especially appreciate the attention and participation of our most senior Member, Senator Byrd, and I ask that his written statement be submitted for the record.

Today I’m also very glad to welcome Senators Grassley, Wyden and McCaskill as our first panel. All three of them have been leaders in efforts to end anonymous, or secret, holds and shine some light on the kinds of long-term delays that can hold up a nomination or a bill for weeks, or months or even longer.

I applaud Senators Wyden and Grassley for their sustained commitment over more than ten years to this issue, again and again urging the Senate to take action. I also congratulate Senator McCaskill for her energetic and successful campaign in this Congress to break loose nominations that have gotten stuck. More than 2/3 of Senators have signed her letter, pledging not to use secret or anonymous holds themselves. I look forward to hearing from them in our first panel.

This is the third in a series of hearings I’ve called for this Committee to examine the filibuster and its impact on the Senate. Our first hearing in April focused on the history of the filibuster. Our second hearing in May dealt with the impact of the filibuster in the current Congress and on the functioning of the government. Today’s focus is on “Silent Filibusters, Holds (secret and otherwise), and the Senate Confirmation Process.”

We did have some good news on this front yesterday, with the passage by unanimous consent of 64 stalled nominations. Three of them – who nobody voted against – were first nominated on July 9, 2009 – almost a year ago. Why were they blocked for so long? That illustrates vividly the problem we are examining in this hearing.

Despite the easing of the logjam yesterday, what we’ve seen overall in this Congress is the worst obstruction of Presidential nominations in recent memory, and the delays in confirmation are affecting the ability of the judiciary and the executive branch to do their jobs.

Even under a Senate that flipped to Democratic control, President Bush’s nominations fared far better than have President Obama’s. President George W. Bush’s cabinet was fully confirmed in 13 days; President Obama’s took 99 days.

As this Congress has progressed, the President’s nominees continue to languish, often when they have little or no real opposition. As of June 17, President Obama had 137 nominations pending on the executive calendar. At the same point in his first term, President Bush had only 45.

Here's another indicator: judgeships. As of June 21, of 84 judges nominated by President Obama, 34 had been confirmed – that's 40%. For President Bush in the same period, 57 judges out of 105 nominated had been confirmed—or 54 %.

If this pace keeps up, President Obama will have the lowest judicial confirmation rate for his first Congress of any modern President. That is not a superlative any of us should be proud of.

As for nominations to executive agencies, at the end of 2009, President Obama had one-third more pending confirmation than President Bush had at the end of his first year. That meant that almost one-quarter of all Obama nominations were carried over to the second session of this Congress, and they are waiting longer to be confirmed – almost three weeks longer on average – than the typical Bush nominee. For too many nominees, like some of those confirmed yesterday, it's months, even a year, longer.

Clearly something is wrong – and we need to do something about it.

Many of these delays relate to current Senate procedures. What do we mean by a 'hold' or 'silent filibuster?' While there is no single definition, it generally refers to the indication by an individual Senator or a Party that if a bill or nomination is brought up in the future, they would object to debating it. This threat of a filibuster is what gives 'holds' their strength, even though there is no requirement for a Majority Leader to honor a hold request.

As the use of anonymous holds has escalated over the last 35 years, there have been repeated attempts to address their use, as our first panel of witnesses will discuss today.

Under the "advice and consent" provisions of the Constitution, the Senator is responsible for confirming (or rejecting) Presidential nominees. But it appears that the Senate, an institution designed to be deliberative and slow, is at times dangerously close to gridlocked. When we are not able to get good, qualified people confirmed to government positions in a timely manner, it hurts the country.

We will hear more from our second panel about how excessive delays in confirmation are devastating to the operation of government and to efforts to recruit the best people to federal jobs.

Today's hearing will continue what I believe to be a thoughtful, deliberative examination of issues related to the filibuster by this Committee, and serve as a basis for future discussions. I believe it will show that we need to consider reforms to improve the confirmation process.