

Senate Committee on Rules and Administration Full Committee Hearing to consider S.Res.355
Tuesday, December 19, 2017

Chairman Shelby, Ranking Member Klobuchar, members of the Committee, thank you for the opportunity to appear before you today to discuss post-cloture debate time for certain executive branch and judicial nominees. As many of you have heard me discuss in public and private conversations over the past year, I believe the Senate has hit a point of gridlock and we are currently spreading our gridlock to the executive branch by not confirming nominations that require advice and consent.

However, this is not the first time that this body has found itself in that position. Over the past decade, the Senate has slowly increased the number and frequency of cloture votes for nominations. From 1949 to 1992, there were only 12 total cloture votes for nominations. Then, starting in the 1993, the Senate averaged around 6 nominations a year until through 2004. In the 109th Session, the average jumped to 9 a year, then in 2009-2012, the number jumped again to over 13 a year. In 2013, at the beginning of President Obama's second term, the Senate determined that something had to be done about nominations. In January of 2013, the Senate passed S.Res.15 by a vote of 78-16, a standing order to reduce post-cloture debate time for most executive branch nominees from 30 hours to 8 hours and reduce post-cloture debate time for district court nominees from 30 hours down to 2 hours. Under the standing order, post-cloture debate time for Supreme Court Justices and Cabinet-level nominations stayed at 30 hours for post-cloture debate.

The standing order in 2013 was an attempt to avoid the nuclear option on executive branch nominations – and for most of the year it worked. However, in November of that year, the Senate established new precedent for the number of votes to invoke cloture on nominations – moving it from a three-fifths majority to a simple majority. For the remainder of the 113th Congress, it only took a simple majority to invoke cloture and the standing order with reduced post-cloture debate time stayed in place.

At the end of the 113th Congress, the standing order expired, returning to the original 30 hours of post-cloture debate, but the simple majority threshold to invoke cloture still remained. For that reason, we find ourselves in an interesting place today.

In 2013, the Senate considered it intolerable that the Senate would have 13-15 cloture votes a year, so they acted. This year, we have had over 50 cloture votes on nominees. We are on a trajectory that frustrates the American people, the Senate and every agency. We are certainly on a course that will lead every future minority party to prevent any future Senate and any future President from taking any action in their first year. The old Roosevelt “first 100 days” focus is gone, since any new President of either party will now take more than 100 days just to get their cabinet selections through the Senate. To get a full contingency of staff, it will take over 11 years.

Mr. Chairman, that is why I’ve introduced S.Res.355 to bring post-cloture debate back to where it was in the 113th Congress and this time to make it permanent. It is consistent to what we have done before as a body and allow the Senate to move efficiently, while still ensuring every Senator’s voice has the opportunity to be heard. These are principles that both Democrats and Republicans should be able to agree on – regardless of whose party is in the White House.

Mr. Chairman, as the Senate slowly works through nominations, the business of American people gets delayed. When agencies have political appointee vacancies, permits are not issued, decisions are delayed, clarifications are stalled, and exceptions cannot be answered. Earlier this year, as FERC waited for several nominees to get approved, their quorum lapsed and they were unable to approve contested rate cases and pipelines. In Oklahoma, the Grand River Dam Authority was waiting on approval of a rule curve variance to keep water levels higher through the summer at a popular recreation area, which they were unable to receive until the nominations were approved and they had a quorum again. It sounds

simple, but this is the real, every day effect of not being able to clear presidential appointees in a timely manner.

The rules of the Senate are the responsibility of the Senators. If we cannot find a way to work together in a fair manner, it is our own fault. This rule change passed with bi-partisan support in a previous Congress – I ask why it could not pass in a bi-partisan way in this Congress.

Mr. Chairman, Ranking Member Klobuchar, members of the Committee, thank you for holding this important hearing today and allowing me to speak to each of you on this topic. I look forward to working with you in the days ahead to ensure that we can honor both the rules of the Senate and ensure that it's working well for the American people.