

The Value of Time in the US Senate: A Fellow's Perspective on Obstruction

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A rush of last minute legislating in the 113th Congress allowed it to narrowly avoid being the least productive Congress in modern history. But as a close second, it remains an instructive example of what a “Do Nothing” Congress can look like. The lack of countable outcomes in the 113th Congress, however, contrasts sharply with my own memories of often frenzied activity while serving as an APSA Congressional Fellow. The disjunction between the volume of work done within Congress and the lack of results is in large part due to the ubiquity and ultimate costs of partisan obstruction. Working within a senator's personal office during the 113th Congress provided me with a valuable vantage point to watch as bills failed to become laws.

While the US Senate shares blame for the growth of congressional dysfunction with its sister chamber, its unique procedural landscape provides the most barriers to legislating. Because the Senate lacks a simple majority mechanism to end debate on most matters, the business of the Senate is in constant danger of being derailed by the threat of a filibuster. As such, the Senate tends to operate under unanimous consent agreements (UCAs) that can fail with just a single senator's objection. The tension between majority and minority parties in the Senate have sparked a spiraling cycle of procedural innovations in obstruction over the last 25 years that collectively have been dubbed the “Senate Syndrome” (Smith 2014).

Several episodes from my fellowship stand out to me as instructive examples of the Senate syndrome. First, I was able to participate in the unique budget pandemonium referred to colloquially as a “vote-a-rama.” Second, I was in a position to watch as the partisan fight over executive nominations devolved to its breaking point and ultimately led a controversial rules reform. From these experiences, I learned that time is one of the most precious commodities for Majority Leaders in the Senate and that congressional staff are an undervalued consideration when examining or theorizing about the operation of the Legislative branch. In this essay, I will briefly discuss these two cases of obstructionism in the Senate as well as describe the handful of lessons that I took away from these experiences.

THE VOTE-A-RAMA

“Vote-a-rama” is a less than technical term for the sequence of votes on amendments that occurs after the time allotted for debate on a budget has been exhausted. The usual debate time for a budget resolution is 50 hours, which can be shortened to just 20 hours

if it is a reconciliation bill. Due to procedural quirks associated with debating a budget resolution, every senator can propose an unlimited number of amendments and, with few caveats, be guaranteed a vote because the resolution itself cannot be voted on until all amendments are dispensed with. While debate is limited to just 50 or 20 hours, the total time for consideration of the bill is unlimited. What this means in practice is that the Senate can spend an additional 10, 20, or perhaps even more hours just voting on a host of amendments one after another without spending any time on debate in between votes.

The vote-a-rama of 2013 was my introduction into what time pressure looks like from within a Senate office. While the technical description of the process is dry, the reality is an agonizing maelstrom of amendment chaos that tests the limits of human endurance and comprehension. Unlike the normal process in which the Senate takes breaks between votes and goes home for the night, amendment votes during a vote-a-rama are considered back-to-back in a nonstop sequence with just about 10 minutes allotted per vote. There is no debate in between and very little warning about which slate of votes will come next. In total, more than 500 amendments were filed to the 2014 Budget resolution. While consideration of these proposals began early on a Friday the final vote did not occur until just before 5am the next day after being in continuous session.

The only way that senators can stay one step ahead of this continuous avalanche of amendments is by leaning heavily upon their staff resources. Each vote must be considered carefully because every recorded vote counts. The votes cast within a vote-a-rama are also likely to end up in future campaign ads because one of the primary goals in an amendment free-for-all is to make one's opponents take tough votes. The job of the staff is to consider each amendment and craft a vote recommendation for the senator based on his or her state's needs, their prior voting record, and past policy positions. Without these careful recommendations that include a practical summary of the proposal, it would be difficult for any senator to keep pace with what they were actually voting on every 10 minutes over the course of a marathon session.

The vote-a-rama of 2013 was a particularly grueling episode in part because of the advancing Senate syndrome. Majority Leaders have become more likely to use a procedural maneuver referred to as “filling the amendment tree” as a means of blocking minority party access to directly filing amendments on most measures. As such, the explosion of amendments in part represented a backlog of demand. In an era of low passage rates for legislation, even failed amendment votes are one way for senators to build a record upon which to campaign.

NOMINATIONS AND THE NUCLEAR OPTION

The fight over obstruction on executive nominations that led to the nuclear option is arguably the most important development of

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the 113th Congress. After years of endemic delay in which nominations have been delayed to death through “malign neglect” (Bond et al. 2009), Senate Majority Leader Reid finally took the Senate “nuclear” in November 2013 by using a reform by ruling to reduce the cloture threshold on nearly all nominations to a simple majority vote. This reform was quite controversial, and it risks changing the Senate rules structure unpredictably and irreversibly. However, minority obstruction in the Senate had become so pervasive that allowing delay to continue was likely the equivalent of foregoing key nominations altogether.

Previously, just a single senator could issue a “hold”—essentially a threat to filibuster a nomination—and block a nomination from proceeding. To break such a hold, a Majority Leader would have to use a cloture motion to end debate and proceed to a direct vote on the nominee in question. If the Leader was able to successfully gain 60 votes in favor of cloture, the minority was still guaranteed 30 hours of post-cloture debate. For many key nominations, such as judicial appointments and nominations to major independent regulatory commissions such as the National Labor Relations Board (NLRB), no coalition of 60 votes for cloture existed as the minority

because of limited time. As noted by Millhiser (2010), it would take the Senate more time than it has in a session to actually sit through the required 30 hours of post-cloture debate on all nominations.

If a minority party exerts its prerogatives to engage in universal obstructionism, time becomes the most precious commodity in the Senate. When considering any action, a Majority Leader must weigh the opportunity costs. If too much time is spent clearing executive nominations, less time remains with which to build a legislative record based on the majority party’s policy priorities. While the Reid rules reform will change the nature of the Senate going forward, the battle over obstructionism is far from over.

CONCLUDING THOUGHTS

My goal upon accepting the fellowship was to find answers to questions that I had not yet thought to ask. Of the innumerable benefits I found serving in the fellowship program, the ability to participate in the politics that occur between the observable results—such as roll call votes or the number of bills passed into law—was perhaps the most enlightening. These were the kinds of insights that are difficult to gain through study at a university. The epi-

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party routinely made the calculation that they were better off with no nominee rather than any nominee that the other party would agree to. Under these circumstances, judicial vacancies were rampant while presidents of both parties were so unsuccessful at getting NLRB nominees confirmed that the board lost its quorum and was unable to operate legally.

In the summer of 2013, Majority Leader Reid threatened to use the nuclear option over a batch of stalled nominations including three NLRB members. I will forever remember this episode as it marks the only time in my life where knowing a bit about Rule XXII and Senate procedure had a practical and non-academic utility due to my role as a staffer. Most of my job consisted of information processing—turning lengthy reports into shorter memos—and my value to the office had little to do with my academic knowledge. The nuclear threat was one of the few instances where I was sought out for my professional intuitions.

The Senate, however, pushed back the nuclear confrontation with compromise. In response to Reid’s threat, enough Republican senators agreed to a compromise that would allow some nominations to go forward and a new slate of NLRB members to be chosen. This was a temporary solution, however, as the deal held for approximately four months. In November of 2013, Reid finally resorted to a reform by ruling to issue a new precedent lowering the cloture threshold on the vast majority of executive nominations to a simple majority vote.

While the Reid rules reform made gaining cloture easier, it did not eliminate the filibuster from the minority’s toolbox of dilatory tactics. Majority Leaders must still call cloture on obstructed nominations and face the potential of 30 hours of post-cloture debate. Oppenheimer (1985) observed that dilatory tactics grow more powerful in direct proportion to their use. For example, filibustering one nominee will leave less time within a session to consider future nominations. The fact that the filibuster continued to exist forced Senate Democrats to prioritize their use of the new cloture threshold

sodes of the vote-a-rama and the tension over cloture reform both provided me with intuitions that would have been hard to discover as an outsider.

While we tend to think about Congress as the 535 voting members of the legislature, I found that the reality is more complex. Without legions of professional staff laboring to produce draft proposals, background memos, press releases, speeches, and vote recommendations, the congressional world would collapse overnight. The significance of congressional staff is staggering. While the episode of the vote-a-rama demonstrates their importance in unique instances, their real importance is in being intimately involved in nearly all aspects of the legislative process every day. Scholars such as Malbin (1980) have rightly warned of the dangers of relying too heavily upon an army of unelected representatives, and yet I cannot imagine a modern Congress without such support. While acknowledging that I may have “gone native,” I firmly believe that the role of professional staff in Congress is one of the most understudied aspects of legislative politics.

The Senate is often introduced as the more leisurely and deliberative of the two chambers. While that may still be true by comparison, I would hardly use either term to describe the Senate more generally. A large portion of the policy that I witnessed being created was done through taking advantage of severe time constraints and/or the ability to piggy-back on must-pass legislation such as authorizations for defense spending or agreements that extend the debt ceiling. So while Congress may not pass much these days, what it can pass is often done under duress and time constraints. Even inconsequential votes on measures that do not become law, such as the amendments stemming from the vote-a-rama, are often conducted under similar time pressures. The extent to which these tendencies lead to lower quality legislating remains an open question.

An impressively unproductive Congress is an ironic place to discover that time is perhaps one of the most valuable commodities

in the modern Senate. The value of time and the lack of productivity, however, are both ultimately the product of a Senate operating under intense obstruction. Reid's use of the nuclear option provides a good example of how Majority Leaders must now prioritize floor time. Within the second half of the 113th Congress, Senate Democrats could use the new rules structure to call cloture and likely win on any nomination. But this does not mean that they could call cloture and likely win on every nomination. Because of limited time, the leadership was forced to prioritize. Obstruction has reached a point where parties will fight over time itself, and as such I believe that efficiency is the key to understanding the management of the modern Senate floor. ■

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