



May 25, 2012

## **Senate Democrats Choose Dysfunction over Solutions**

The Senate is a unique legislative institution, designed to guarantee that the minority party – and the large block of Americans it represents – has a voice. Traditionally, this body functions well when the majority party works to find consensus with the minority party on the process and substance of legislation. Consultation and compromise with the minority party historically has been the rule, not the exception it has become in recent years.

Senator Robert Byrd understood the importance of allowing for a full debate and amendment process in order to preserve the Senate as a [unique institution](#) in our democracy – “the one place in the whole government where the minority is guaranteed a public airing of its views.” The Senate, he taught, “was intended to be a forum for open and free debate and for the protection of political minorities.” Indeed, “as long as the Senate retains the power to amend and the power of unlimited debate, the liberties of the people will remain secure.”

Allowing the minority to debate and amend legislation has given way to the Democrats’ election-year political strategy of blaming Republicans as obstructionists. Majority Leader Reid has done this by preventing Republicans from amending pending legislation, ending debate before it starts, and by-passing the committee process.

### **Democrats Have Blocked Input on Legislation**

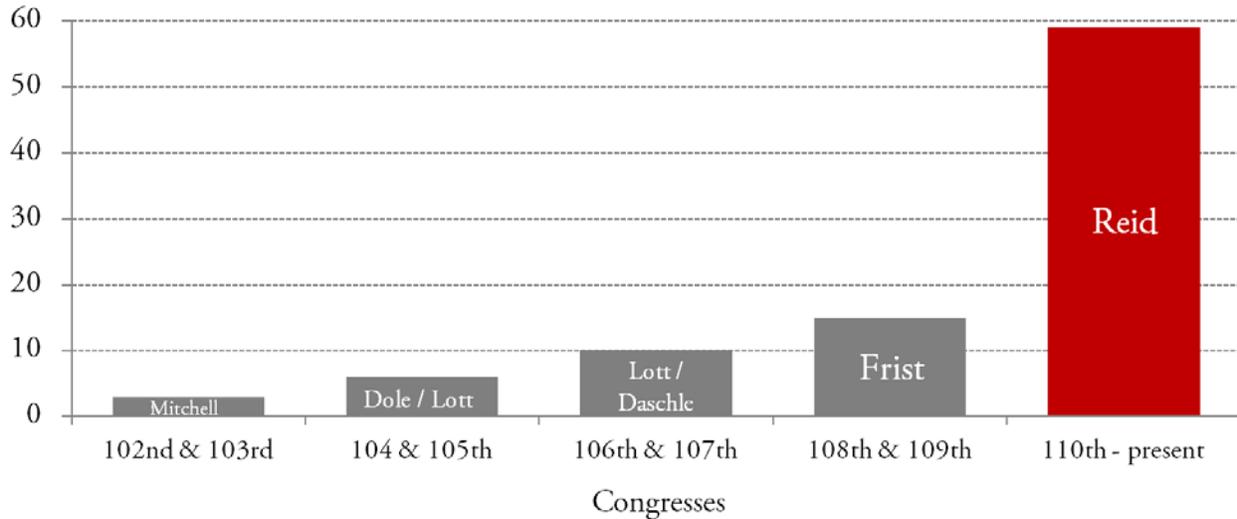
Majority Leader Reid has made a habit of squelching the voice of the minority by curtailing its ability to amend legislation. The Majority Leader is always the first to be recognized on the Senate floor. He can use that power to offer a series of Democratic amendments to pending legislation in a way that prevents Republicans from offering any of their ideas. This is called “filling the tree.”

Majority Leader Reid [once insisted](#) that the practice “runs against the basic nature of the Senate.” By the way the Senate operates today, however, it is clear that he has abandoned that assessment. According to the Congressional Research Service (CRS), Majority Leader Reid has employed this tactic a record **59** times.<sup>1</sup> He has used it to block minority input into legislation 50 percent more often than the past six Majority Leaders *combined*. The minority’s only option under these circumstances is to oppose ending debate on legislation (known as “invoking cloture”) in order

to convince the majority to allow it to offer amendments to the legislation and thereby represent the interests of their constituents.

### “A Very Bad Practice”

*Number of times the Majority Leader has “filled the tree”*

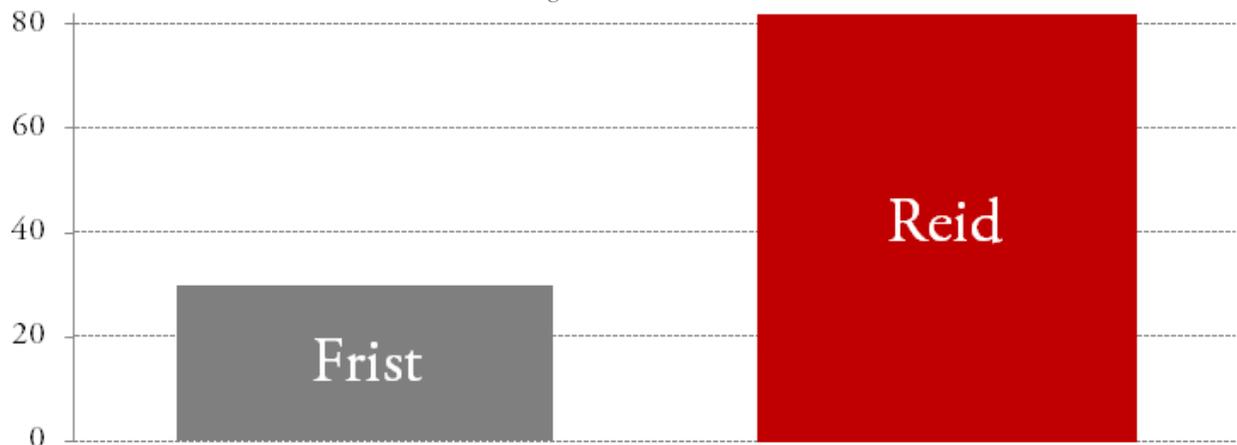


### Democrats Have Shut Down Debate Before It Even Starts

In the Senate, the majority can end debate on any matter by a procedure known as cloture. Majority Leader Reid has indicated his lack of interest in deliberation by moving frequently to shut down debate *the very day* measures are first raised on the Senate floor. According to CRS, Majority Leader Reid has done this 99 times, not counting same-day cloture filings on motions to proceed. Of these, 82 were during the 110<sup>th</sup> and 111<sup>th</sup> Congresses. In comparison, during the two preceding Congresses Majority Leader Frist employed this tactic 30 times.

### Number of Same-Day Cloture Filings

*Excluding Motions to Proceed*

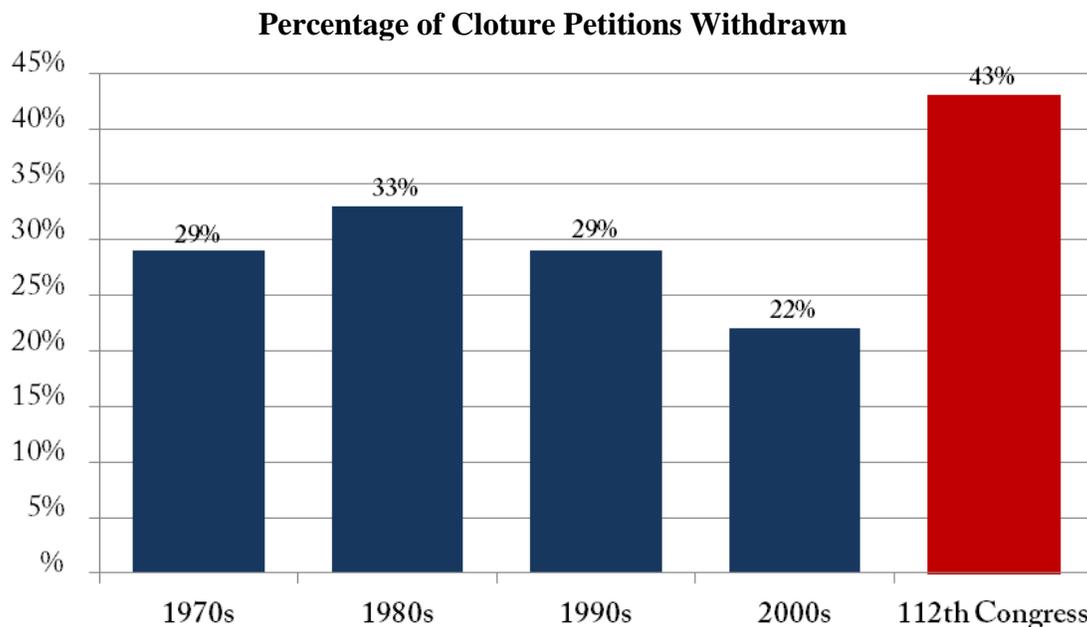


## The False Narrative of Republican Filibusters

Republicans have been [accused](#) of abusing the filibuster to thwart Democratic legislation. This claim is based on the incorrect equation of filibusters with the number of cloture petitions filed or the number of cloture votes taken. In short, a cloture petition does not a filibuster make. A filibuster, however, happens when an attempt to end debate fails. Successfully ending debate is the opposite of a filibuster.

It only takes a quick glance at the [count of](#) cloture votes, however, to realize that Republicans are not obstructing with the filibuster. In fact, the percentage of cloture petitions withdrawn or vitiated has increased to 43 percent this Congress.

This is significantly higher than the average for the previous four decades, and the highest for any Congress in 25 years. Additionally, the percentage of cloture votes passing – that is, invoking cloture – is also rising. The 53 percent success rate for passing cloture votes in the 112<sup>th</sup> Congress is the highest in the last 40 years. These figure show that any increased incidence in cloture filings is due to the Majority’s impulsiveness—its preference for filing cloture first and asking the Minority to work with it later—rather than an unwillingness of Senate Republicans to work with Senate Democrats.



## Democrats Short-circuit the Committee Process to Block Debate

In the Senate, legislation generally is referred first to a committee of Senators with specialized experience in the matter at hand. The committee process typically involves hearings and legislative “markups” where a small group of Senators can discuss proposed legislation in detail and consider a wide range of amendments. This process can allow for significant minority party participation. However, the current majority has completely eliminated the committee process

for important matters. According to CRS, Majority Leader Reid has bypassed the committee process 50 percent more than his predecessor during a comparable period of time.

## **Democrats Change the Rules and Ignore Precedent to Shut Out Republicans**

Last fall, Majority Leader Reid went so far as to [change the rules of the Senate](#) in order to empower himself to shut out Republicans entirely from the legislative process. He did so by using the so-called nuclear option to change Senate procedures with a simple majority vote, despite his commitment earlier in the year not to use this tactic. Specifically, during consideration of the China currency bill last October, the Majority Leader filled the amendment tree in order to prevent Republicans from offering any amendments before cloture was invoked. Once cloture was invoked, Republicans tried to exercise their rights under the Senate's rules to express themselves by offering motions to suspend those rules—motions that the Senate Parliamentarian ruled were proper. The majority simply changed Senate rules by establishing a new precedent that any such motions offered post-cloture would now be out of order. As a result, the Majority Leader was able to squelch completely the voice of the minority on issues of importance to its constituents.

The Majority Leader again ignored recent precedent earlier this year when President Obama recess appointed nominees to executive branch positions, despite the fact the Senate was in pro forma session to prevent such appointments. In 2007, the Majority Leader pioneered the practice of keeping the Senate in session on a pro forma basis to prevent President Bush from making recess appointments. At the time, Majority Leader Reid [insisted](#) these pro forma sessions were necessary “to block the President from doing an end run around the Senate and the Constitution with his controversial nominations.” By switching positions once President Obama was in the White House, Majority Leader Reid unfortunately chose to ignore [Republican concerns](#) and to disregard the Senate's [constitutional role](#) in the nominations process.

## **When Allowed, Republican Input Improves the Process and Legislation**

When Democrats have chosen to stifle debate and block the amendments, legislation goes nowhere. When they agree to a reasonable amendment process, however, the record of accomplishment shows that Republicans can help clear a path forward. For example, just this week, Majority Leader [expressed his pleasure](#) with Republican cooperation in moving forward with the FDA legislation. He shouldn't have been surprised – when he consults with Republicans and allows them to participate in the legislative process, there have been several legislative accomplishments this session alone. When Democrats agreed to allow amendments on the Export-Import Bank bill, the Senate was able to complete this important legislation. This year alone, Republican cooperation has led to passage of:

- Export Import Bank Reauthorization;
- Trade Adjustment Assistance;
- Patent Reform;
- FAA Reauthorization;
- Highway Bill

## **A Hyper-Partisan Senate is Not a Serious One**

Rather than create hyper-partisan conditions by impulsively filing cloture on measures, bypassing the committee process, and blocking Republicans from offering amendments, Majority Leader Reid should work with Republicans. The record is clear: simply allowing the minority to participate in the process leads to consensus and accomplishment. This should remain the rule, not the exception.

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<sup>1</sup> CRS statistics cited herein are based on research provided to author.