



The Lynch Filibuster That Never Happened

The appointment of Loretta Lynch to be the nation's Attorney General won Senate confirmation on April 23, 2015. She is now the successor of Eric Holder who had held the office during all the previous years of the Obama presidency.

But Ms. Lynch never committed herself regarding the matter, dancing around it like so many federal officials have done over many years. That alone should have been enough reason for senators to refuse confirmation. But she survived thanks to the efforts of Senate Majority Leader Mitch McConnell (R-Ky.) and a number of go-along senators. During hearings leading up to her confirmation, Ms. Lynch was asked about possible use of executive orders by the President to create law, especially law regarding illegal immigrants. Making law with the stroke of a pen has, of course, always been a violation of the Constitution's very first sentence: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Anyone who understands the meaning of the word "all" would know that no President can make law. The President's job is to see that laws are "faithfully executed."

The Senate's procedural rules contain the possible use of the procedure known as filibuster. It allows continued debate about an issue, even dragging on indefinitely, until an objectionable measure is withdrawn. While a filibuster is underway, no other Senate business can be conducted. Use of the filibuster, therefore, is a fairly powerful tactic. Senate rules state that breaking one needs the votes of 60 senators. This means that a mere 41 can start a filibuster and continue it for as long as it may take in order to have an objectionable measure or confirmation withdrawn.

Top Republican Senator Mitch McConnell of Kentucky wanted the Lynch nomination approved. Some Republican senators indicated that they would approve the nomination. Others sought to create a filibuster. But breaking one had to be accomplished first. So he convinced 10 senators who were opposed to the nomination to vote to break any possible use of the filibuster. More than 60 votes were needed to do so and ten senators who would later vote against confirmation of Ms. Lynch dutifully went along with the McConnell plan. With all 46 Democrats and several additional Republicans supporting



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cloture (the breaking of any possible filibuster), that hurdle was overcome.

The ten who sided with McConnell in the cloture vote went on to vote against her confirmation in the final vote. So they are able to say to constituents that they were opposed to approving Ms. Lynch, thereby seeming to uphold condemnation of the president's expressed desire to usurp congressional law-making power. But had they not lined up with McConnell in the cloture vote, Ms. Lynch would never have been confirmed. It was a very slippery move. The ten slippery Republican senators who voted to cut off debate on the nomination (the cloture vote) are: Alexander (Tenn.), Corker (Tenn.), Burr (N.C.), Tillis (N.C.), Capito (W.Va.), Gardner (Colo.), Roberts (Kan.), Cornyn (Texas), Rounds (S.D.), and Thune (S.D.).

Constituents might care to let these senators know that the key role they played in confirming Loretta Lynch to be Attorney General will not be forgotten. Ten other senators who voted with the Democrats to approve the nomination of Ms. Lynch were wrong to do so, but they weren't so devious. Their vote deserves some condemnation as well. The ten GOP senators who voted for confirmation after the filibuster threat had been defeated are: Ayotte (N.H.), Cochran (Miss.), Collins (Maine), Flake (Ariz.), Graham (S.C.), Hatch (Utah), Johnson (Wis.), Kirk (Ill.), McConnell (Ky.), and Portman (Ohio). Now our nation has another Attorney General willing to thumb her nose at the Constitution.

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