



Written by [Warren Mass](#) on March 24, 2017

Democrat Leader Schumer Calls for Filibuster on Gorsuch Vote

After Senate hearings on President Trump's Supreme Court nominee Neil Gorsuch ended on March 23, there is an increasing possibility of a filibuster led by Senate Democrats. If Democrats stage a filibuster (prolonged debate), then it will take a vote of 60 senators to invoke cloture (end debate.) Short of that, the Republican leadership can invoke what has been called the "nuclear option" — a change in Senate rules to allow the confirmation of Gorsuch to be accomplished by a simple majority vote of 51 senators.



Republicans currently hold a 52- to 48-member advantage in the upper house. If they can convince eight Democrats to join them in ending debate, a filibuster would not be successful.

Speaking from the Senate floor on March 23, Senate Minority Leader Chuck Schumer (D-N.Y.; shown) called for a filibuster to stop a vote on the Gorsuch nomination.

Schumer began his speech by speaking about only his own vote:

After careful deliberation, I have concluded that I cannot support Judge Neil Gorsuch's nomination to the Supreme Court. His nomination will have a cloture vote. He will have to earn 60 voters for confirmation. My vote will be no and I urge my colleagues to do the same. To my Republican friends who think that if Judge Gorsuch fails to reach 60 votes we ought to change the rules, I say if this nominee cannot earn 60 votes, a bar met by each of President Obama's nominees and George Bush's last two nominees, the answer isn't to change the rules. It's to change the nominee.

During his speech, Schumer criticized what he perceived as Gorsuch's "deep-seated conservative ideology." But at least one example he offered to bolster his argument revealed much about the New York senator's own deep-seated disregard for the Constitution. He said:

[Gorsuch's] career and judicial record suggest not a neutral legal mind but someone with a deep-seated conservative ideology. He was groomed by the Federalist Society and has not shown one inch of difference between his views and theirs.

Schumer's condemnation of Gorsuch for having views that are compatible with the Federalist Society indicate that he, himself, has very opposite views. This makes a brief examination of the society worthwhile.

The Federalist Society was founded simultaneously at three law schools — Yale, Harvard, and the University of Chicago — in 1982. The founders stated that such an organization was needed because: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society."

The society defines itself as follows:



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The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks both to promote an awareness of these principles and to further their application through its activities.

Schumer did not explain which part of that mission statement he finds contrary to his views. Perhaps it is, “the separation of governmental powers is central to our Constitution.”

The society was started by a group of some of the most prominent conservatives in the country at the time, including Attorney General Edwin Meese and Solicitor General and Reagan Supreme Court nominee Robert Bork. Its membership has since included several Supreme Court justices, including the late Antonin Scalia, Chief Justice John G. Roberts, Clarence Thomas, and Samuel Alito.

The Federalist Society looks to *Federalist* No. 78 for an articulation of the virtue of judicial restraint, as written by Alexander Hamilton: “It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature.... The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body.”

Given its clearly constitutionalist goals, and the stature of many of its founding and present members, it is fair to surmise that Schumer does not so much have a problem with the Federalist Society as he has with the Constitution.

As noted above, to end the filibuster proposed by Schumer, Republicans must find eight Democrats to join them in voting to end debate. Their best hope for finding them is from the 10 Democratic incumbents facing reelection next year in states that Trump won. One of these states is Pennsylvania, but Sen. Bob Casey (D-Pa.), who faces a tough reelection battle next year, has already said he will not vote for Gorsuch. Casey’s announcement drew an immediate reaction from Brian Rogers, executive director of the conservative political action committee America Rising Squared, who said in a statement:

“By opposing an up-or-down vote on Judge Gorsuch, it is clear that Senator Casey cares more about appeasing far-left activists threatening his reelection this year than he does the views of most Pennsylvanians.”

However, a more moderate Democrat, while not saying how he will vote on Gorsuch’s confirmation, Sen. Joe Manchin (D-W.Va.) said during an interview with Yahoo Global News Anchor Katie Couric on March 23 that he would not join a Democratic filibuster of the nominee.

Manchin, who said he’s “not a big filibuster guy to begin with,” said that Gorsuch should get an up-or-down vote unless a senator has an actual, strong concern about him.

“How do you preserve the Senate? How do you preserve the input that the minority should have? Because what goes around comes around,” he said. Manchin continued:

I don’t expect, as a Democrat, that he’s going to appease a lot of Democrats because of his philosophical beliefs. But guess what? The Democrats, we didn’t win the presidential election so you don’t expect to get a center-left [Supreme Court justice].



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A March 24 article from Fox News offered an interesting perspective on the Democrats' filibuster threat. The writers, one a law professor at the University of California School of Law at Berkeley and the other a law professor at the University of Virginia, said that "Schumer's promise to invoke a filibuster signals the success, not the failure, of Judge Neil Gorsuch's Supreme Court nomination."

His reason for forming that conclusion?

If Democratic Senators had made any progress in attacking Gorsuch's qualifications, record, or judicial philosophy, they could persuade their Republican colleagues to reject Gorsuch. With 48 Senators in their caucus, Democrats would only need persuade three Republicans to join them.

But they cannot. Anyone watching the confirmation hearings — and between us we have watched all of them going back to the ones for Antonin Scalia, whose untimely death created the current vacancy — can tell that the Democratic Senators had already thrown in the towel.

The writers concluded:

The sense that Gorsuch is going to be confirmed is nearly universal, making these hearings as exciting as a Soviet show trial. Some people are going to pay attention. But most already know the ending.

Photo of Sen. Chuck Schumer: AP Images

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