

# Republican Perspective

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## Faux Indignation

Senate Majority Leader Mitch McConnell refuses to ensure a hearing for President Barack Obama's nominee to replace Associate Justice Antonin Scalia. His reasoning is that we are in a presidential election year, and the new president---whether Republican or Democrat---should be the one to nominate Scalia's replacement.

Leading Democrats have been quick to criticize Republican "obstructionism." Among those expressing outrage are President Obama, Vice President Joe Biden, and Senators Harry Reid and Chuck Schumer. After all, they did not try to block President George W. Bush in similar circumstances. Did they?

In January of 2006, when Bush had fully two years left in his first term, Senate Democrats attempted unsuccessfully to filibuster his nomination of Samuel Alito. Joining that filibuster: Senator Schumer, Senator Reid, and then-Senators Obama and Biden.

Then in July 2007, when Bush was in his "lame duck" year, as Obama is now, Schumer said "I would recommend to my colleagues that we should not confirm any Bush nominee to the Supreme Court except in extraordinary circumstances."

Well, at least their position is historically consistent. In 1992 (the lame duck year of President Bush the elder), then-Chairman of the Senate Judicial Committee Biden declared that his committee should not schedule "hearings on the nominee until after the political campaign season is over." And "once the political season is under way and it is, action on a Supreme Court nominee must be put off until after the election campaign is over."

Have Senate Republicans attempted to block President Obama's judicial nominees? Not so much.

President Obama has made two Supreme Court nominations, Sonia Sotomayor and Elena Kagan. Although Republicans at the time held sufficient Senate seats to mount a filibuster, they did not filibuster either nominee. Nine Republicans joined Democrats in confirming Sotomayor and five did so in support of Kagan.

To date, President Obama has made 55 nominations to the Circuit Courts of Appeals. All were confirmed by the full Senate. Significant Republican opposition materialized in just a handful of cases, but none was blocked. In fact, most nominees were confirmed with unanimous or near-unanimous votes---demonstrating Republican support for allowing the President his prerogative.

The dynamic of the confirmation process changed, however, beginning with President Obama's 40<sup>th</sup> appellate nominee---in late 2013 when President

Obama was into his second term. Although most of his nominees sailed through virtually without any Republican opposition, there was resistance on two very controversial nominees in late 2013. Enough opposition that Republicans mounted a filibuster effort. Then-Senate Majority Leader Reid solved this problem by unilaterally changing the Senate rules to remove the filibuster from the confirmation process. Thus the party-in-power could run the show without concern for the opposition. A one-party system, kinda like a politburo or Sacramento.

So the record does not support the charge of systematic Republican obstruction of President Obama's judicial nominees.

As to nomination of a Scalia replacement, McConnell's stance is debatable. But it closely mirrors Schumer's and Biden's stated position when the presidency was in Republican hands.

The accusations and scoldings by Reid, Schumer, Biden, and Obama are patently hypocritical. Their faux indignation just doesn't pass the smell test.