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A nuclear end to denial

By [E.J. Dionne Jr.](#), Published: November 24

Those who lament the Senate Democrats' [vote to end filibusters](#) for presidential nominations say the move will escalate partisan warfare and destroy what comity is left in Congress. Some also charge hypocrisy, since [Democrats once opposed the very step](#) they took last week.

In fact, seeing the world as it is rather than pining for a world that no longer exists is a condition for reducing polarization down the road. With their dramatic decision, Senate Democrats have frankly acknowledged that the power struggle over the judiciary has reached a crisis point and that the nature of [conservative opposition to President Obama](#) is genuinely without precedent.

What happened on [Nuclear Thursday](#) has more to do with the rise of an activist conservative judiciary than with the norms of the Senate. From the moment that [five conservative justices issued](#) their ruling in *Bush v. Gore*, liberals and Democrats realized they were up against forces willing to achieve their purposes by using power at every level of government. When the *Bush v. Gore* majority insisted that the principles invoked to [decide the 2000 election in George W. Bush's favor](#) could not be used in any other case, they effectively admitted their opportunism. Dec. 12, 2000, led inexorably to Nov. 21, 2013.

Bush v. Gore set in motion what liberals see as a pernicious feedback loop. By giving the presidency to a conservative, the five right-of-center justices guaranteed that for at least four years (and what turned out to be eight), the judiciary would be tilted even further in a conservative direction.

Bush was highly disciplined in naming as many conservative judges as he could. His appointments of [Chief Justice John Roberts](#) and [Associate Justice Samuel Alito](#) bolstered the Supreme Court's conservative majority. The court later rendered such decisions as *Citizens United*, which [tore down barriers to big money in politics](#), and *Shelby County v. Holder*, which [gutted a key part of the Voting Rights Act](#). Both, in turn, had the effect of strengthening the electoral hand of conservatives and Republicans.

With the conservatives' offensive as the backdrop, [Senate Democrats and liberals on the outside revolted in 2005](#) against the Republican threat to use



the nuclear option when the GOP controlled the Senate. Progressives felt they had no choice but to throw sand into the gears of a juggernaut.

Liberals said things eight years ago that are being used by conservatives to accuse them of hypocrisy now. I didn't have to look far for an example of what they're talking about.

In a column in March 2005, I called the GOP's effort to speed the confirmation of conservative judges "[a blatant effort to twist the rules](#)" that ignored "the traditions of the Senate." I might take back the "traditions of the Senate" line, a rhetorical attempt to call conservatism's bluff. But what animated my argument then is the same concern I have now: This era's conservatives will use any means at their disposal to win control of the courts. Their goal is to do all they can to limit Congress's ability to enact social reforms. At the same time, they are pushing for measures — notably restrictions on the right to vote — that alter the electoral terrain in their favor.

And it is simply undeniable that in the Obama years, conservatives have abused the filibuster in ways that liberals never dreamed of. Senate Majority Leader Harry Reid cited the Congressional Research Service's (CRS) finding that in our history, there have been 168 cloture motions filed on presidential nominations. Nearly half of them — 82 — happened under Obama. According to CRS, of the [67 cloture motions on judicial nominees](#) since 1967, 31 occurred under Obama. Faced with this escalation, senators long opposed to going nuclear, among them Reid and California's Dianne Feinstein, concluded it was the only alternative to surrender.

Republicans gave the game away when all but a few of them opposed Obama's [three most recent appointments](#) to the Court of Appeals for the D.C. Circuit not on the merits but by accusing the president of trying to "pack the court." In fact, Obama was simply making appointments he was constitutionally and legislatively authorized to make. His nominees were being filibustered because they might alter the circuit court's philosophical balance. The GOP thus demonstrated beyond any doubt that it cares far more about maintaining conservative influence on the nation's second most important judicial body than in observing the rules and customs of the Senate.

This is why the Senate Democrats' action will, in the end, be constructive. The first step toward resolving a power struggle is to recognize it for what it is. The era of denial is finally over.

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