

If You Thought the Campaign Was Bad, Wait Until the Confirmation Hearings

Not so long ago, when Democrats held a slim majority in the U.S. Senate, the conservatives in the Republican minority oftentimes provided a thorn in then-Majority Leader Harry Reid's side by filibustering.

The mere mention of the word "filibuster" could stop the entire legislative process, unless Democrats and weak-kneed establishment Republicans cobbled together 60 votes to invoke cloture. It was frustrating for the Democrats, so they invoked the so-called "nuclear option" by reducing the required votes for invoking cloture to a simple majority.

Conservatives warned they would rue the day they changed the rules. And now they are.

President-elect Donald Trump is building a Cabinet that promises to fulfill his mission of "draining the swamp" in Washington, D.C., and Republicans hold a 52-seat majority in the Senate, which is constitutionally tasked with providing "advise and consent" confirmation of those Cabinet picks. Democrats won't be able to do anything, procedurally, to stop the process.

But that doesn't mean they won't make it as painful as they possibly can.

If you thought the 2016 presidential campaign was ugly, you haven't seen anything yet. Senate Democrats plan to make the Cabinet confirmation hearings absolutely brutal by comparison.

How do we know that for certain? Well, because it's already begun.

Attorney General-designate Jeff Sessions, who has spent the better part of the past two decades representing Alabama in the Senate, should be an absolute lock for confirmation. And, yet, Senate Judiciary Committee Ranking Member Dianne Feinstein (D-Calif.) demanded more time to review the documents supplied with Sessions' confirmation questionnaire.

"First, Senator Sessions' production is, as I understand it, in excess of 150,000 pages of material. This is more than 100 times what Attorney General Lynch produced (1,500 pages) and more than 29 times what Attorney General Holder produced (5,100 pages)," she wrote to Chairman Chuck Grassley (R-Iowa). "I am sure you would agree that staff must have sufficient time to do the due diligence on any nominee for this vital position—and this due diligence will likely take longer than the review for recent, prior nominees who had less materials to analyze."

She then complained that the documentation Sessions provided was incomplete, saying this reinforced her reasoning for a delay in the confirmation process:

"Given the lengthy public life that Senator Sessions has led, it is not surprising that he and his staff have had great difficulty in providing a complete submission to the committee on the accelerated timetable that has been set forth. But that does not in any way lessen this committee's obligation to obtain a full record and completed response to its questionnaire for a nomination to the highest law enforcement position in our government. The integrity of this committee's process is a vital component of checks and balances in our government."

Grassley, who is about to begin his seventh term in the Senate, has been through more than his fair share of confirmations, and made it clear he's not going to engage in the Democrats' games. Immediately upon receipt of Feinstein's letter, he issued the following statement:

The materials provided to the committee by Senator Sessions are in large part public documents that anyone can find on his official Senate website. It's information that's been publicly available, in some instances, for 20 years. In fact, only a small percentage of the material was not already publicly available. As the committee members know, Attorney General Holder supplemented his questionnaire multiple times with, literally, hundreds of additions and clarifications, including one update more than a year after he was confirmed. And, most importantly, his hearing remained on schedule. So, any suggestion that a nominee's good faith efforts to locate and produce responsive material is cause for delay begins to look like a call for delay for delay's sake, rather than a thorough review of a colleague's character and qualifications. I look forward to hearing from Senator Sessions on Jan. 10.

Grassley followed that up with a letter to Feinstein on Wednesday:

I write in response to your December 13, 2016 letter concerning Senator Sessions' nomination to serve as Attorney General of the United States.

As an initial matter, thank you for your letter of Friday, Dec. 9. I appreciate your agreement to follow the precedent that the timeline for holding a hearing begins to run when the nominee returns his or her questionnaire materials. Senator Sessions produced the remainder of his materials in response to the questionnaire within minutes of your staff delivering your letter to mine on Friday.

As you know, the questionnaire calls for nominees to produce a wide range of published writings and public statements. Senator Sessions expeditiously collected the records of his decades in public life to provide the Committee with fulsome responses to the questionnaire on a timeline similar to past

nominees. It is no surprise that Senator Sessions' 20 years of service as our colleague—not to mention his service in the Department of Justice and to the State of Alabama—yielded an extensive record.

Nor is it any surprise that Senator Sessions' production consists almost entirely of writings and speeches that were previously publicly available, including speeches he has delivered on the Senate floor and statements he has made at committee meetings you and I have both attended. In fact, initial staff review indicates that only a fraction of Senator Sessions' production was not previously available to the public. Unlike previous nominees whose records were largely unknown to the committee, Senator Sessions is well-known to all of us. Far from delaying our review, Senator Sessions' extensive public record—including service known personally to members of this committee—should aid the determination of his character and qualifications for this high office on a timeline consistent with prior nominations, if not earlier.

Senator Sessions produced comprehensive responses to the committee questionnaire—documenting the life of public service we have all witnessed—to aid us in that task. The purpose of our review is to assess the qualifications and character of a man you and I have known and served beside for two decades.

In light of his record and his production to the committee, your letter claims deficiencies in two categories of Senator Sessions' questionnaire responses—first, his response concerning his role in various political campaigns, and second, his response supposedly omitting two specific speeches he delivered.

With respect to the first, the question regarding previous political activity is of course designed to ascertain whether and how a nominee has been politically active. There

can be no surprise that a sitting United States senator is politically active. And as you know, for a United States senator, these activities simply do not necessarily take the form the questionnaire contemplates.

Regarding the claim that several speeches were not included, of course you also know that we and our colleagues are frequently called upon to speak at a variety of constituent and other events. Senator Sessions explained that he made his best effort to identify and locate copies of such remarks where available. Like prior nominees for the office of attorney general, he also indicated that there may be other such materials he is unable to identify, locate or remember. He also provided a list of speeches for which no notes exist—including one of the speeches identified in your letter, which he gave to the Federation for American Immigration Reform in 2007. This approach is consistent with the practice of prior nominees and with the reality you and I know well—that Senators speak regularly to a wide variety of groups, often with no prepared text or notes remaining after an event. Senator Sessions has nevertheless produced hundreds of pages of such remarks, providing plenty of material to aid us in our review of his record and character.

Moreover, as you know, it's not unusual for a nominee to supplement his or her questionnaire. For example, you will recall Attorney General Eric Holder supplemented his questionnaire materials several times. In December 2008 alone, Attorney General Holder supplemented his questionnaire responses with more than 200 items of information. He provided further supplemental responses before his confirmation hearing in January 2009. Indeed, he even wrote to the Committee in March 2010—more than a year after his confirmation—to identify several litigation matters before the Supreme Court he had not disclosed in his questionnaire responses. Notwithstanding those supplemental

submissions, Attorney General Holder's hearing was held on the timeline this Committee will follow for Senator Sessions.

I agree with you: leadership of the highest quality at the Department of Justice is vital indeed. Senator Sessions has provided this committee with fulsome responses clearly resulting from a good faith effort to answer the questionnaire. I look forward to working with you to ensure Senator Sessions receives the full and fair hearing he deserves on January 10 and 11.

If this is how the Democrats are going to handle a shoe-in for confirmation like Sessions, can you imagine how they're going to go after the many people from corporate America whom Trump has sought to bring into his administration? {eo}