

Dodging the Rules in Trump's Republican Congress

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The election of President Donald Trump in 2016 ushered in the first Republican Congress and White House in a decade. Despite unified party control in the 115th Congress (2017–18), House and Senate GOP majorities struggled to legislate: GOP fissures and an undisciplined, unpopular president frequently undermined the Republican agenda. Most notably, clashes within and between the two parties strained old ways of doing business. In response, Republicans dodged, bent, or reinterpreted several institutional constraints in pursuit of their party's legislative priorities. In this article, I explore the conditions that drive majority parties to find ways to dodge the rules of the game—taking steps to circumvent institutional constraints, short of formally changing the rules. I focus in particular on Republican efforts in Trump's first Congress to empower majorities in the Senate—identifying potential political and institutional forces that propel majorities to confront parliamentary constraints in the contemporary Congress.

There is not a doubt in my mind that if the majority breaks the rules of the Senate, to change the rules of the Senate with regard to nominations, the next majority will do it for everything. I wouldn't be able to argue a year and a half from now, if I were the majority leader, to my colleagues that we shouldn't enact our legislative agenda with a simple 51 votes, having seen what the previous majority just did. I mean, there would be no rational basis for that.

—Senate minority leader, Mitch McConnell (R-Kentucky), June 18, 2013

Months before Senate Democrats in 2013 deployed the so-called nuclear option to eliminate filibusters of all nominations save for the Supreme Court, then minority leader Mitch McConnell (R-Kentucky) vowed that Republicans would follow suit when they regained the majority: the days of the legislative filibuster were numbered, McConnell threatened. Even after gaining control of the White House and both chambers of Congress in the 2016 elections, however, Senate Republicans took only incremental steps to bolster the power of the Senate majority—most notably deploying the nuclear option to ban filibusters of Supreme Court nominations. Republicans did bend several other institutional rules and practices in 2017. But despite McConnell's threat to abolish the legislative filibuster, Republicans stepped back from this ultimate institutional brink.

Why do majorities dodge some rules but not others? More generally, how do we account for recent efforts by Congressional majorities to brush aside formal and informal rules that otherwise might constrain pursuit of their agendas? In this

article, I explore the conditions that might lead partisans to try to bend—rather than formally change—the rules of the game. I focus in particular on Republican efforts during Trump's first two years in office to bolster the parliamentary advantage of Senate majorities—identifying political and institutional forces that shape the incidence of rule bending in the contemporary Congress.

DODGING CONGRESSIONAL RULES

Students of Congress—and political institutions more broadly—typically consider institutions more or less binding constraints on the players who live under them. As such, spatial and other models of politics typically consider institutions as fixed elements of the legislative game that shape the players' strategies. But Congressional institutions are not technically “exogenous.” As Cox (2000, 170) defines them, exogenous rules cannot be legally changed without the agreement of some other actors outside of the legislature. Indeed,

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congressional rules (formal or informal) are better thought of as “endogenous”: lawmakers themselves choose them. And if lawmakers can choose the rules of the game, in theory they can also revamp or revoke them. That is true even for institutional norms that limit the players’ discretion, even if the origins of norms are often unknown.

That said, as Riker observed some time ago, even if institutions deliver decreasing returns, an organization’s members can find it hard to marshal support for revamping the rules of the game: “If institutions do generate an outcome in which everyone loses, it is reasonable to expect some new and less distasteful institutions . . . *although it may take generations to alter them*” (1980, 445, emphasis added). This stickiness of endogenous rules leads Riker to note “that we can get a lot of mileage out of relatively stable institutions” (445), even if rules are technically endogenous. Most importantly, as Cox (2000) argues, we can infer from the often high costs of changing the rules that institutions do indeed matter: they empower majorities to set agendas and help determine political and policy winners and losers. And so long as majorities are winning under the rules, they are likely to use their powers of agenda control to keep rival institutional proposals off the table—enhancing the stability of congressional rules (Moe 2005).

Congressional institutions take many forms, including formal “standing” rules of the chamber, binding chamber “precedents,” informal committee practices, and provisions of federal laws, such as the Congressional Budget Act. In the House, formal changes to standing rules require a majority vote of the chamber. Although changes to the Senate’s standing rules also require a majority vote, Senate rules set a higher threshold (two-thirds of senators present and voting) for cutting off debate on any motion or measure to change the rules. In contrast, House and Senate precedents (essentially, interpretations of how the chamber’s formal rules apply in different parliamentary situations) can be adopted or amended by simple majority vote. And informal practices or norms—such as the degree of deference given to home state senators for nominations in their states—lack any formal requirement governing the process for change.

An important takeaway in thinking about institutional variation is that lawmakers can alter the rules of the game without formally changing them. One of the most recent such episodes occurred when Democrats in November 2013 went “nuclear,” banning filibusters of all judicial and executive branch nominees, save for the Supreme Court. The plain language of the Senate’s cloture rule (Rule 22) requires a three-fifths majority (or 60 senators) to cut off debate on debatable measures and motions, including nominations. And the rule requires a two-thirds vote to limit debate on motions to make formal changes to the Senate’s standing rules (including Rule 22).

By simple majority vote, however, Democrats overruled the presiding officer’s ruling that 60 votes are required to cut off debate on nominations. That was Democrats’ nuclear move. By overruling the chair, Democrats set a new precedent that a simple majority was sufficient to cut off debate on most nominations. Democrats thus reinterpreted “three-fifths” to mean “simple majority” when applied to nominations—even though senators did not adopt a motion to bring the language of Rule 22 in conformity with the new precedent.¹ That is why the Senate minority leader charged that Democrats had broken the rules to change the rules (Maier 2013).

At considerably lower institutional cost, parliamentary norms can also be bent. Take, for example, the Senate’s “blue slip,” a century-old Senate Judiciary Committee practice that allows home state senators for executive or judicial appointments to delay or derail judiciary panel consideration of a nominee under varying conditions (Binder 2007; Box-Steffensmeier et al. 2016). The judiciary panel chair sets his or her own blue slip policy and can enforce it, backed by a majority vote of the committee.² By virtue of being an informal committee practice—rather than formal element of the Senate or its committees—the cost to the chair (or a future chair) of revamping (or reinstating) the norm is low. The recent, frequent alteration of the policy suggests a low barrier for change.

Shepsle (2017) calls the Senate’s recent nuclear moves “rule breaking” transgressions. As a technical matter, Senate majorities hold the power to interpret how a chamber rule should be applied in a particular parliamentary circumstance (Dauster 2016, 651).³ By doing so, majorities set new binding precedents for the future—unless and until a subsequent majority votes to alter the precedent. That power itself is enshrined in the Senate’s precedents. As Riddick and Frumin note in their compilation of Senate precedents: “Any ruling by the Chair not appealed or which is sustained by vote of the Senate, or any verdict by the Senate on a point of order, becomes a precedent of the Senate *which the Senate follows just as it would*

1. Senate Democrats were not the first majority to reinterpret chamber rules without actually changing them, a practice often termed “reform by ruling” (Koger 2010; Wawro and Schickler 2006, 2010). Nor was the 2013 episode the first time Democrats had exploited a “nuclear” move to limit the minority’s right to amend or debate legislative or procedural motions.

2. Most blue slip policies set the conditions under which a nominee can secure a committee hearing. Judiciary Committee rules empower the chair to set the panel agenda, and a majority of the committee can vote to back up his or her call for a vote. So committee majorities can enforce deference to home state senators that is (conditionally) enshrined in the policy.

3. Such votes are technically taken in response to a ruling of the presiding officer. If a senator appeals the ruling of the chair, the question before the Senate becomes whether to uphold the ruling of the chair. For constitutional-related questions, the presiding officer typically does not rule but instead turns the question over to the Senate to decide.

its rules, unless and until the Senate in its wisdom should reverse or modify that decision” (1992, 987, emphasis added). In other words, there is no technical prohibition to stop the Senate from evading or bending formal rules in this way.⁴ Senate rules and practices after all have no means of “protecting” themselves from senators seeking to change or reinterpret them. Still, there is a difference between what senators can do and what is considered “in order” in the Senate.⁵ Setting new precedents that contradict formal chamber rules are hardly “in order” in the Senate—meaning that they contravene established Senate practices. Like Shepsle (2017), we might well call such behavior “rule breaking.” But rule bending or dodging is arguably a less pejorative way to describe the outcome of reinterpreting rules in a manner at odds with the formal language of the chamber’s standing rules. Of course, what majority parties might call rule bending, minority parties will call “breaking.” Regardless, it is likely a distinction without a clear difference.⁶

To be sure, legislative scholars more often focus on the conditions that foster formal reform of congressional rules rather than the politics of evading them. But limiting analysis to formal changes in congressional rules risks missing the most interesting and arguably consequential parliamentary dynamics during the first two years of Trump’s administration. Republican efforts in 2017 to evade institutional constraints raise interesting and important questions about the durability of both formal and informal congressional institutions in a time of deeply polarized, highly competitive—and yet sometimes fractured—political parties.

WHY DODGE THE RULES?

Under what conditions will lawmakers dodge, evade, or bend—rather than formally change—Senate rules or practices? In this section, I explore the dynamics that underlie legislative efforts to circumvent the rules of the game. The concept of dodging the rules, however, begs an initial question: Why do lawmakers—especially senators—not just follow established order for formally changing Senate rules? First, and most obviously, Senate Rule 22 requires a two-thirds vote to end debate on motions to change the rules—a higher threshold than Rule 22 requires for cloture on all other debatable motions. That means that motions to change the rules in a way that

4. Or as Binder, Madonna, and Smith (2007) put it, these reform-by-ruling scenarios are certainly technically feasible even if not always politically feasible.

5. I thank Congressional Research Service experts for conversations making plain the importance of the distinction.

6. For consistencies’ sake (and with a nod to Riddick), I refer to such transgressions interchangeably as rule bending, dodging, evading, or circumventing rather than “breaking.”

would limit the rights of senators to delay or derail the majority can themselves be filibustered. In a period of intense partisan conflict—when majorities would be more likely to want to restrict than expand minority rights—opponents would surely filibuster and (absent an oversized majority) succeed.

Second, congressional time is zero sum. Time spent building support for parliamentary gambits limits time available for pursuing policy change (Cox 2000). Opportunities for House and Senate majority parties to secure favored policy goals tend to be limited and short-lived. That suggests majorities in either chamber should be loath to invest in formally changing the rules—even when their party controls Congress and the White House. That is precisely and ironically the context in which a party could gain the most by changing Senate rules to empower a simple majority.

Under what conditions then should we expect senators to dodge the rules? I offer a stylized model that pits the intensity of majority party preferences against the costs (broadly construed) of evading rules in pursuit of the majority party’s agenda. Trading off costs and benefits is commonplace in studies of institutional dynamics in the Senate. Wawro and Schickler (2010), for example, observe that Senate majority parties sometimes very narrowly curtail Senate rules governing debate. Such tailored procedural moves limit a party’s policy gains but also cap party losses. Koger (2010) also focuses on the costs of altering rules. He suggests that ideologically extreme senators should be more likely to oppose banning filibusters since they have the most to lose in policy terms if reform empowers the median senator. More generally, Binder et al. (2007) suggest that variation over time in the political costs of reform conditions the chances the Senate will “go nuclear” to reinterpret rules to party advantage.

Figure 1 offers a simple way to think about the trade-offs endemic in dodging the rules. The intensity of the majority

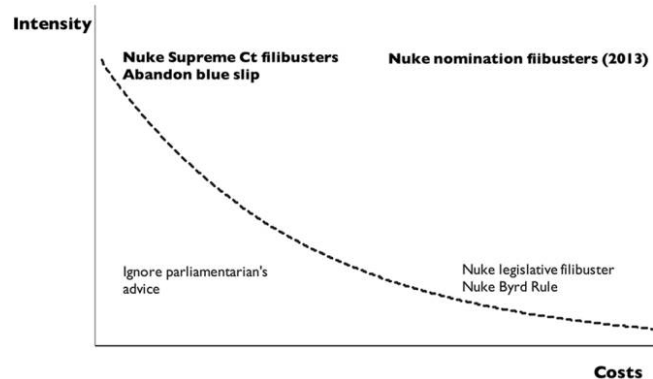


Figure 1. Forces shaping Senate rule dodging. Likelihood of Senate rule dodging as a function of majority party intensity and costs of rule bending. Bolded rule changes were implemented in 2017 or 2013; nonbolded rule changes were proposed in 2017 but not adopted.

party's interest in reform is arrayed along the *Y*-axis; costs of dodging the rules, along the *X*-axis. Majority party intensity reflects both the salience and homogeneity of interest in a particular agenda item across majority party members. How important is the issue to party leaders and rank and file? How widespread is the intensity of interest shared across the party? For example, civil rights issues were highly salient in the mid-twentieth century, but majority party Democrats were deeply divided. In contrast, tighter regulation of guns today is both highly salient to Democrats, and the issue largely unites them. Intensity would be highest when party members broadly agree on the importance of pursuing a particular policy goal. Intensity declines as importance wanes or cleavages emerge within the party.

Consider these examples from Trump's first year in office. Republicans shared the president's top priority of repealing and replacing the Affordable Care Act but disagreed about how to do it. When the House passed a version of repeal and replace, it included provisions that likely violated the Senate Byrd Rule—a provision of the Congressional Budget Act that limits the sorts of provisions that can be included in or added to filibuster-proof "reconciliation" bills that are considered on the Senate floor.⁷ Federal budget law requires 60 votes to overturn points of order related to the Byrd Rule or to waive potential Byrd Rule violations. Thus, some conservative GOP senators advocated taking procedural steps that would evade the bite of the Byrd Rule as a means of protecting House-passed provisions in the bill. The steps envisioned would have required Senate Republicans to ignore the advice of the parliamentarian that the provisions violated the Byrd Rule—setting up a series of motions that would have allowed a simple majority (rather than 60 votes) to pass a more conservative-leaning health care bill.⁸ But other Repub-

7. For an explanation of Byrd Rule violations of the Congressional Budget Act, see Heniff (2016). On GOP proposals to "nuke" the Byrd Rule, see Haberkorn and Kim (2017).

8. Technically, the parliamentarian evaluates contested provisions of (and amendments to) filibuster-proof budget reconciliation bills and then advises the Senate's presiding officer (i.e., the chair) on whether they violate the Congressional Budget Act's Byrd Rule (or other provisions of the law). If a senator offers a point of order on the Senate floor that a provision or amendment violates the Byrd Rule, the chair turns to the parliamentarian for advice on how to rule on the point of order; he or she typically rules on the basis of the parliamentarian's interpretation of the Budget Act. If the chair upholds the point of order, it takes 60 votes to overturn the chair's ruling—thus green-lighting the provision or amendment. (Alternatively, supporters of the provision or amendment could try to muster 60 votes to waive the Byrd Rule.) If the parliamentarian advises that the chair uphold the point of order and the chair then ignores the advice and fails to sustain the point of order, opponents would have to secure 60 votes to overturn the chair's ruling in order to jettison the apparent Byrd Rule violation. In other words, once no longer bound to follow the parliamentarian's interpretation of the Budget Act,

licans balked: because they disagreed on policy solutions, few wanted to ignore the advice from the parliamentarian or to evade the Byrd Rule's 60-vote requirement. Fissures on policy lessened party intensity in evading the rules to repeal and replace Obamacare.

In contrast, Senate Republicans were strongly united in favor of confirming Gorsuch to the Supreme Court swiftly. But they lacked the necessary 60 votes to kill an anticipated Democratic filibuster of Gorsuch's confirmation vote. When majority leader McConnell led Republicans through the procedural steps to allow a simple majority to cut off debate on Supreme Court nominees (following the precise set of motions and votes Democrats had taken in 2013 to eliminate other nomination filibusters), all Republicans voted in favor. In short, the more intense the majority party in support of a particular policy goal, the more willing it is to dodge formal rules.

Costs are defined more broadly to capture both policy and institutional effects of evading rules and norms. Policy effects of rule dodging vary by scope (narrow or broad) and horizon (short or long term). The narrower the effects of the rule or norm change, the lower the costs to the majority for evading it. One example of a narrow effect was reducing Rule 22's supermajority threshold for ending debate on Supreme Court nominations to a simple majority. Only future Supreme Court nominees (and likely only those selected when the same party controls the Senate and the White House) would be affected.⁹ In contrast, going nuclear on the legislative filibuster (which would eliminate supermajority cloture requirements for all debatable motions related to legislative measures) would have extremely broad policy effects. The unbounded impact of nuking the legislative filibuster surely raises the majority party's policy costs for transgressing the rule. That type of rule bending could be particularly costly (and granted, unlikely) for a less intense, fractured majority that disagreed on policy problems and solutions.

The temporal effects of institutional change also matter: rule dodging with immediate—but not necessarily long-term—effects should cost the majority less. Changes to the Senate

a majority is free to legislate independent of past practice or precedent. Ignoring the parliamentarian when Senate precedent is relatively clear would be highly unusual in the contemporary Senate. As Beth (2013, 12) argues, "under fundamental principles of Anglo-American parliamentary law, the chair in a deliberative assembly is not supposed to make procedural rulings according to the individual preferences and discretion of its occupant, but rather is to rule in accordance with existing rules and their established precedential interpretations."

9. Recall that Republicans in 2016 evaded the norm that the Senate consider Supreme Court nominees selected by the opposition party president (Bravin 2017).

blue slip practice, for example, are time bound: each new judiciary chair typically sets his own blue slip policy. In contrast, proposals to evade the Byrd Rule would be more durable. Even an intense majority might find such a procedural move quite costly given uncertainty about future party control of the Senate and how the next majority might exploit a weakened budget law to their party's advantage. Granted, all senators do not necessarily place the same weight on future parliamentary needs. More senior senators or those who have served in both the majority and minority might place more weight on the procedural rights afforded to individuals and the minority in the future. More junior senators or those who have never served in the minority might discount future parliamentary needs, thinking about rules they need today, rather than tomorrow.

Plotting intensity against policy costs, however, inadequately captures costs imposed by evading rules. One view is that bending rules lowers the political costs for future rule violations. Once one party bends rules or norms with little negative political fallout or policy repercussion, the costs are arguably lower for the next party because the other party "did it first." That is largely how Republicans in 2017 justified their decision to ban filibusters of Supreme Court nominees: the Democrats did it first when then majority leader Harry Reid (D-Nevada) led his party to eliminate filibusters of all other nominations. Notably, despite his 2013 threat, McConnell vowed before the GOP started the process for eliminating Supreme Court nomination filibusters that he would not lead an effort to ban the legislative filibuster—suggesting the differential costs of the two forms of evading institutional constraints. Arguably, rule dodging generates a form of path dependence by increasing returns to the party that evades rules or norms. As a particular procedural path becomes well worn, the costs of following it go down. These increasing returns to parties bending the rules make it less likely future majorities will take a different path and abide by the rules. Indeed, McConnell might have promised skittish colleagues that he would not pursue a ban on legislative filibusters precisely for this reason. Foreswearing more rule bending might have been an acceptable cost to McConnell to secure majority cloture for Supreme Court nominations.

Rule dodging also requires majorities to accept a special trade-off: lowering institutional barriers to action arguably weakens legislators' respect for the binding constraints of rules and practices more generally. In other words, rule bending could be institutionally costly to both parties. Shepsle (2017, 140) puts it best: "persistent violation of rules jeopardizes not only the particular rules being violated but also the *concept* of collective self-regulation by rules." That of course suggests a different form of path dependence: an institution survives

despite decreasing returns.¹⁰ If the players perceive the rules as easily broken, the binding power of institutions weakens. Why abide by the rules if you doubt others will? This dynamic is a prime example of what Levitsky and Ziblatt (2018, 122) call "politics without guardrails": hardball exploitation of the rules rather than mutual forbearance (i.e., restraint) by the parties.¹¹

As suggested in figure 1, intense majorities might sometimes be willing to pay these high costs given the intensity of party interest in securing their goals. The Democrats' move to nuke judicial and executive branch nominations in 2013 (upper right corner of the figure) illustrates an intense majority willing to carry the high costs of being the first party to selectively lower Rule 22's cloture threshold by reinterpreting the rule by majority vote.¹² That might be why many observers were surprised that Reid and the Democrats actually used the nuclear option in that way in 2013. And despite Republican warnings at the time that the majority leader had "killed the Senate," Republicans followed suit in 2017 to eliminate the Supreme Court nomination filibuster at significantly lower cost (as shown in the shift in costs to the left in fig. 1).

More often, however, high costs—especially with a less intense majority—will temper a majority party's willingness to break the rules. Thus, as shown in the lower right corner of the figure, a fissured GOP in 2017 failed to eliminate the 60-vote threshold in the Byrd Rule or for legislative filibusters more generally as proposed by conservatives when Republicans were unable to repeal and replace Obamacare. Even less costly moves—such as the Senate's presiding officer ignoring the parliamentarian's advice when ruling on points of order (lower left corner)—can be thwarted when parties fracture. Institutional costs, Shepsle (2017, 133) argues, reinforce the stickiness of rules, intensify gridlock, and perhaps deter some rule bending.

One might object that only preferences—and not institutional costs—matter in shaping a majority's calculus about dodging the rules. Once a majority is sufficiently united on policy grounds, it will evade rules that stand in its way. Failure to dodge the rules would thus reflect the diversity of policy views within the majority rather than the costs of transgressing the rules. It is tough to fully discount this alternative given

10. For another perspective on the ways in which Senate parliamentary dynamics can generate decreasing returns, see Binder et al. (2007).

11. Granted, Levitsky and Ziblatt (2018) have in mind more existential elements of democratic governance than whether lawmakers wait for Congressional Budget Office (CBO) estimates before bringing a bill to the floor.

12. To be clear, past majorities have pursued nuclear "reform by ruling" moves (Koger 2010; Wawro and Schickler 2006). But no party had successfully gone nuclear to lower Rule 22's cloture threshold.

the difficulties of measuring the costs of evading institutional constraints. That said, the surgical precision with which the Republican majority in the 115th Congress cut back particular rules and practices—such as abolishing the blue slip for federal appellate court nominees but not for district court or US attorneys—is hard to explain on the basis of preferences alone. If a majority party is sufficiently united on breaking down institutional barriers that can thwart confirmation for nominees slated for the federal appellate bench, why leave in place practices that protect the parliamentary right of senators to block other nominees considered by the same committee? A strong possibility is that the perceived costs—depriving senators of influence in selecting nominees for salient positions back home—rather than policy views drives senators’ selective evasion of Senate practices.

Moreover, some GOP senators suggested in the heat of their party’s consideration of measures to repeal the Affordable Care Act that undermining the Byrd Rule through a nuclear-like procedure might be an institutional step too far: evading the Congressional Budget Act (a law) struck some senators as costlier than evading rules or practices. “We’re not at liberty to do that,” Senate GOP majority whip John Cornyn (R-Texas) argued. “We can’t just change a law that way” (Haberkorn and Kim 2017). That reluctance could be strategic; perhaps Republicans just disagreed over how to repeal or replace the Affordable Care Act, encouraging them to keep the budget law intact. No doubt that is partially true. But senators seem to recognize the varying institutional costs that accompany different modes of evading the rules. If so, both preferences and institutional costs likely shape the conditions under which leaders attempt to dodge the rules.

POLITICS OF RULE DODGING IN THE SENATE

Table 1 catalogs salient institutional episodes of rule dodging (either proposed or undertaken by Senate Republicans) over the course of Trump’s first 18 months in office. The

list includes targets that run the gamut from formal rules (Rule 22), committee practices (freezing a nomination if a home state senator objects via the so-called blue slip), informal norms (waiting for CBO estimates of what a bill will cost before casting floor votes on the bill), and floor precedents (following the parliamentarian’s advice) to statutory law (the Congressional Budget Act’s Byrd Rule). Republicans succeeded in evading Rule 22’s supermajority threshold for voting on Supreme Court nominations—arguably a goal that garnered intense GOP interest and could be achieved at low cost. But Republicans declined to pursue costly rule dodging suggested by their own colleagues: using the nuclear option to ban legislative filibusters and to evade supermajority requirements embedded in federal budget law. The breadth of the effects of those changes would have been far wider than nuking Supreme Court filibusters, raising their costs for a majority with numerous fissures on major policy issues. Weak intensity and high costs arguably enhanced the stickiness of the rules.

A closer look at senators’ positions on nuking the legislative filibuster affords us a better sense of the politics of transgressing Senate rules. Some Republicans, including Ted Cruz of Texas, advised that Republicans reinterpret Rule 22 to lower the threshold from supermajority to simple majority for measures and motions related to legislation (Klein 2018). Republicans leaders in 2017 did not call up the proposal for a floor vote. Thus, we lack direct evidence of senators’ preferences regarding banning legislative filibusters. However, a bipartisan pair of senators circulated a letter to the majority and minority leaders while Republicans were preparing to nuke the filibuster to ease confirmation of Neil Gorsuch to the Supreme Court. The letter urged leaders to oppose any effort that would curtail the rights of senators to filibuster legislative measures and motions. Senators Susan Collins (R-Maine) and Chris Coons (D-Delaware) secured a total of 61 signatures, including just over half of the Republicans (29 of 52) and roughly two-thirds of the Democrats (32 of 48).

Table 1. Salient Rule-Bending Proposals and Outcomes in the Senate (January 2017–May 2018)

Proposal	Outcome
Ignore negative “blue slips” from home state senators for US Court of Appeals nominees	Implemented
Set precedent to reduce cloture threshold to simple majority for Supreme Court nominations	Implemented
Floor votes before Joint Tax Committee estimates available	Implemented
Floor votes before Congressional Budget Office estimates available	Implemented
Set precedent to reduce postcloture debate time for some nominees	Senate committee hearing
Set precedent to reduce cloture threshold to simple majority for motions to proceed to appropriations bills	No action
Set precedent to reduce cloture threshold to simple majority for legislative measures/motions	No action
Set precedent to eliminate Byrd Rule’s 60 vote requirement	No action
Direct chair to rule contrary to advice of the parliamentarian on settled matters	No action

Senators' decisions on whether to sign the letter serve as a proxy for their views on nuking the legislative filibuster. Letter signing is an imperfect measure of a senator's procedural preferences. Talk is cheap, especially in the Senate. And signing a letter does not necessarily capture a lawmaker's sincere views. For example, Senator Bob Corker (R-Tennessee) refused to sign the letter, arguing that it provided cover to the majority leader for bending the rules on Supreme Court nominees (Schor 2017).¹³ McConnell and Schumer did not sign the letter (since it was addressed to them). And McConnell made plain (conveniently forgetting his 2013 statement that there would be no rational basis *not* to act) his opposition to eliminating legislative filibusters. "I would be the beneficiary, and my party would be the beneficiary" of requiring only a simple majority to cut off debate on legislative measures and motions, McConnell noted. But he added, "I'm opposed to changing it. I think that's what fundamentally changes the Senate" (Schor 2017). And the letter does not afford us a direct test of the impact of perceived institutional costs of bending Senate rules.

Still, the broadscale effort by Collins and Coons to maximize support for the letter suggests that senators' decisions about whether to sign the letter offer a valid if rough proxy for preferences on bending the cloture rule for legislative measures and motions. To examine the forces that shape senators' procedural preferences, I estimate a statistical model of senators' letter signing decisions. First, as a measure of majority party intensity in favor of rule breaking, I test whether Republicans were disproportionately less likely to sign the letter, thus expressing their support for further bending the filibuster rule. Failure to detect a relationship would signal insufficient GOP cohesion on their conservative colleagues' proposal to nuke the legislative filibuster.

Second, I explore whether a senator's ideological bent shapes his or her support for limiting the right to filibuster.¹⁴ Following Koger (2010), ideological outliers should be more likely to favor protecting the filibuster: a senator's ability to block the majority from pressing its agenda on the floor should be especially valuable, the more extreme a lawmaker's preferences. And if ideological outliers benefit from the filibuster when they serve in either the majority or the minority party, ideologues from both parties should be more likely to sign the

letter. Alternatively, the most conservative and liberal senators could be the strongest supporters of eliminating the filibuster. The frustrations of right-wing Republicans in 2017—who felt stymied by supermajority requirements—could lead them to disproportionately refuse to sign the letter. Similarly, left-wing Democrats—who stand to benefit the most from simple majority cloture when their party regains the majority—might disproportionately refrain from signing the letter. By this logic, both parties' leaders might also be more likely to withhold their signatures, on the grounds that supermajority rules perennially frustrate a majority party's ability to secure an off-center agenda.¹⁵

Third, I include a number of controls for other forces that may shape lawmakers' procedural views including senators' seniority in the chamber and whether they have ever served in the Senate minority party. Both of these factors might increase senators' fealty to the legislative filibuster, increasing the chances that they might sign the letter to protect the procedural status quo. Finally, I probe whether senators signing the letter were also more likely to face voters in 2018. And more specifically, given Trump's repeated tweets urging senators to eliminate the filibuster (Pramuk and Wilkie 2018), I test whether GOP senators running for reelection in 2018 were disproportionately more likely to sign on.

I present parameter estimates from a logic model for the decision to sign the letter in figure 2. (The full estimates appear in table A1.) Ideological outliers are markedly less inclined to save the legislative filibuster: The farther a senator is ideologically from the average senator, the less likely he or she is to sign the letter. That relationship captures attitudes of both arch conservatives like Ted Cruz and Mike Lee and staunch liberals like Bernie Sanders and Elizabeth Warren. Contrary to the view that ideologues benefit the most from rules that facilitate obstruction, the results suggest that contemporary outliers are more likely to favor rule bending—perhaps as a means of securing preferred, off-center policy outcomes.¹⁶

Notably, party leaders disproportionately refrain from signaling support for the legislative filibuster. To be sure, Mitch McConnell in 2017 reversed his previous position, now favoring the filibuster. McConnell aside, party leaders' reluctance to sign the letter suggests either leaders' frustration with rules that bind the majority party or a desire to hold their

13. Still, Senator Corker voted with Republican colleagues to lower the threshold for cutting off debate on Supreme Court nominees. Senate Roll Call Vote #109, April 6, 2017.

14. To identify each senator's distance from the average senator, I calculate the absolute value of each senator's DW-NOMINATE (first dimension, Common Space) distance from the mean DW-NOMINATE score for the chamber. NOMINATE scores are available from <http://voteview.com>.

15. I code Democratic and Republican leaders as indicated by the US Senate: <http://www.senate.gov/senators/leadership.htm> (accessed February 1, 2018).

16. Splitting senators by party and reestimating the model yields similar results: ideological wings of both political parties refrained from signing the letter.

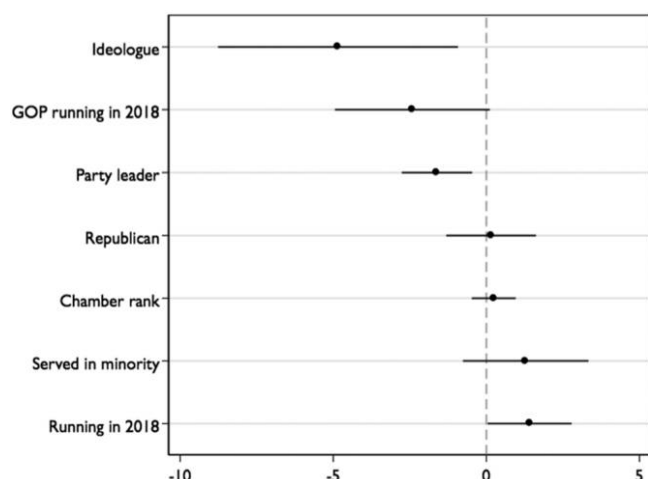


Figure 2. Ideologues and party leaders are less likely to support saving the filibuster. Coefficients and 95% confidence intervals from logit model estimating senators' likelihood of signing the Collins-Coons letter to protect the Senate filibuster. Dependent variable is coded 1 for letter signers, 0 otherwise. Estimates from Stata 14.2, using robust standard errors clustered by state.

fire given disagreement within their party over nuking the filibuster. The former might explain GOP leaders' (save McConnell) refusal to sign the letter. The latter makes more sense for Democratic leaders given record heights of partisanship and an unpopular Republican president. We should hardly expect Democratic leaders to support nuking the filibuster while Trump is president. But they might prefer not to take a stand given disagreement within their caucus. Notably, counter to expectations, more senior senators and those with experience in the minority party did not disproportionately sign the letter.¹⁷

Finally, senators facing the electorate in 2018 are more likely to sign the letter, favoring the parliamentary status quo. However, if we model letter signing by Democrats and Republicans separately, only Democrats running for reelection in 2018 are more likely to sign on. That makes sense given that Democrats need to turn out their anti-Trump base and Independents come November. Rule dodging now would advantage Republicans, creating an incentive for reelection-seeking Democrats to sign the letter. That said, the handful of Republicans running for reelection do not lean decidedly to the president's position in favoring elimination of the filibuster.¹⁸

17. Nor are longer-serving senators or those who have served in the minority party more likely to be closer to the ideological center (mean) of the chamber.

18. As of June 2018, only five Republicans were running for reelection in 2018; they split 3:2 in signing the letter.

CONCLUSION

No party has a monopoly on dodging institutional rules that they find constrain pursuit of their agenda. Albeit to varying degrees, both parties have evaded the rules when their members have been both sufficiently united on policy and willing to bear concomitant costs. Granted, both parties justify dodging rules to empower the majority party by pointing to obstructive tactics of the minority. In Smith's (2014) terms, a logic of "obstruct and restrict" underlies interactions between the two parties in the contemporary Senate. The majority party reacts to minority party obstruction by further repressing the minority's parliamentary rights. The opposition party responds in kind by developing new ways to obstruct the majority, behavior that convinces the majority to tighten the thumbscrews yet again on the minority. And so on. Bending the rules—whether by abolishing informal practices, violating institutional norms, or reinterpreting formal rules—in this sense is a natural part of the chamber's contemporary parliamentary warfare.

That said, not every parliamentary proposal Republicans considered in 2017 was a direct response to minority party obstruction. Rushing votes before CBO scores were available more likely reflected Republicans' desire to lock down their majority. Waiting for CBO cost estimates would have exposed Republican lawmakers to official and politically unpalatable evidence that Affordable Care Act repeal would increase the number of uninsured and the cost of health insurance—making it harder to secure votes. Of course, CBO estimates would have given Democrats yet another metric for attacking Republicans on health care. So concern about Democrats' reactions likely helped to shape the GOP's decision to evade the requirement for cost estimates for major bills.

This broader procedural arms race intensifies as the parties polarize. Recently, this institutional dynamic features majority parties—frustrated by the difficulty of securing their policy goals with a slim Senate majority—willing to evade regular order to alter the rules of the game. The greater the partisan payoff, the more willing intense, cohesive majorities are to trade off the policy and institutional costs of rule dodging and bending. To be sure, majority parties are not highly cohesive on all elements of their agenda. Nor is every agenda item equally salient to their members. And minority parties do not always seek to block the entirety of a majority party's program, although some parties (particularly Republicans from 2009 through 2014 during the Obama administration) do.¹⁹ On balance though, when intense majorities face de-

19. Recall then minority leader McConnell's vow to make President Obama a "one-term president."

clining costs of dodging the rules, they appear more likely to at least try to bend them. That was certainly the lesson of 2017 when Republicans discovered that unified party control was insufficient to deliver the off-center policies they had trumpeted for years to their base.

The view that majority parties try to exploit the rules of the game in pursuit of partisan advantage is consistent with recent work on the Senate (e.g., Reynolds 2017). A simpler explanation is also worth entertaining: Senators know so little about the rules today that they are unlikely to challenge leaders who want to bend them. Senators' lack of procedural knowledge—compounded by their inexperience presiding over the Senate (given the practice of rotating junior senators in and out of the chair)—significantly reduces the costs of evading the rules. Of course, although hard to quantify, the loss of procedural expertise among senators has no doubt been underway for some time (Wallner 2014). And longer-serving senators—those who likely have more parliamentary experience under their belts and thus might better appreciate the limits imposed by Senate rules—were not especially likely to sign the Collins-Coons letter to save the Senate filibuster. Neophyte senators might support ambitious party leaders seeking to bend rules. But senators' diminished familiarity with Senate procedures probably plays at best an incidental role in driving this dynamic.

Party tribalism—albeit only on the most salient issues that unite their conference—likely shapes majority senators' willingness to evade obstacles to majority rule. Notably, however, lawmakers' willingness to devise a path around institutional barriers—or to bulldoze right through them—has not made Congress appreciably more productive. Even when Republicans succeeded in enacting landmark tax cuts late in 2017, rule bending (facilitating swift passage of a measure that disproportionately favored corporations and higher income voters) might have contributed to the law's partisan odor and its marginal popularity with voters (Warshaw 2017). How institutions regain their binding power in a highly charged, partisan environment remains to be seen.

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APPENDIX

TABLE A1. Ideologues and Party Leaders Are Less Likely to Support Saving the Filibuster

Independent Variable	Coefficient	Robust SE
Republican	.15	.75
Running in 2018	1.41	.70
Republican running in 2018	−2.42	1.29
Ideological wings	−4.84	1.20
Party leader	−1.61	.59
Chamber rank	.24	.37
Served in minority party	1.29	1.05
Constant	.99	1.51

Note. Estimates for model shown in fig. 2. Coefficients from logit model estimating likelihood of signing the Collins-Coons letter to protect the Senate filibuster. Dependent variable is coded 1 for letter signers, 0 otherwise. Logit estimates from Stata 14.2, using robust standard errors clustered by state. $N = 100$; Wald $\chi^2 = 26.09$; log pseudolikelihood = -54.52 .

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