



May 3, 2018

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## **OPPOSE S. RES. 355, A RESOLUTION TO LOWER POST-CLOTURE DEBATE TIME FOR NOMINATIONS**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write in opposition to S. Res. 355, a resolution introduced by Senator Lankford that would dramatically reduce the post-cloture debate time for judicial and executive branch nominations.

S. Res. 355 would reduce the post-cloture debate time for two critically important categories of presidential nominations: U.S. District Court Judges (from the current 30 hours down to just 2 hours) and sub-cabinet executive branch nominees (from the current 30 hours down to 8 hours). And because the post-cloture time under S. Res. 355 would be equally divided, the amount of debate time for the minority party would effectively be just one hour for district judges and four hours for sub-cabinet nominations.

This proposal would not lead to well-qualified nominees who will garner bipartisan support. Instead, it would undermine the Senate's constitutional advice-and-consent function and further erode the Senate's ability to serve as an independent check on the President's troubling nominations. The current 30-hour post-cloture rule is the only remaining guardrail in place for the minority party to slow down the confirmation process and allow time for the proper vetting and consideration of nominees. Many of the pending nominees have been jammed through a Senate committee after insufficient and inadequate vetting by the committee and by the Trump administration. The effort to pass S. Res. 355 is the latest procedural abuse by Senate Republicans who have put partisan politics over principle in their haste to confirm President Trump's ideological and extreme nominees.

At the April 25, 2018 Senate Rules Committee markup, where S. Res. 355 was passed on a 10-9 party-line vote, Ranking Member Klobuchar made several important arguments against this misguided proposal.<sup>1</sup> First, she noted that it would be just the second time in history in which the Senate adopted a rule to permanently change the time available to the Senate to debate an issue.

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<sup>1</sup> <https://www.rules.senate.gov/hearings/improving-procedures-for-the-consideration-of-nominations-in-the-senate>.

Second, when the Senate adopted a rule change similar to S. Res. 355 in January 2013, it passed with bipartisan supermajority support (78-16) because: (1) it was a short-term change (lasting only for two years), (2) the cloture threshold was at 60 votes (thus greatly enhancing the ability of the minority party to filibuster nominees), (3) the “blue slip” process for judicial nominations was respected, (4) the Obama administration had a thorough and effective process of vetting and selecting nominees, and (5) there had been four years of unprecedented obstruction of President Obama’s nominees. None of those circumstances and procedural protections exist today.

Lastly, Senator Klobuchar noted that Senate Democrats have rarely even used the full 30 hours of post-cloture debate time to which they are entitled under current rules. Since the beginning of the Trump administration, of the 86 nominees for whom cloture has been invoked, Senate Democrats have only used 20 or more hours of debate on *two* nominees – just 2.3 percent. Of the 86 nominees who have been considered, Senate Democrats agreed to votes on 74 of the nominees (over 86 percent) after using eight or fewer hours of debate. S. Res. 355 is clearly a solution in search of a problem.

Senate Republicans claim that S. Res. 355 is necessary because President Trump’s nominees have been unfairly held up, but the facts tell a different story. In 2017, President Trump had more circuit court judges confirmed (12) in his first year than any other president in American history. To date, President Trump has had 50 percent more judges confirmed than President Obama at this point of their presidencies: 32 for Trump versus 21 for Obama. It’s true that President Trump has had fewer executive branch officials confirmed than President Obama, but that’s because he has made far fewer nominations than President Obama. In an October 2017 interview, President Trump explained: “I’m generally not going to make a lot of the appointments that would normally be -- because you don’t need them. I mean, you look at some of these agencies, how massive they are, and it’s totally unnecessary. They have hundreds of thousands of people.”<sup>2</sup>

Without the 30-hour rule in place, the Senate would have confirmed many troubling judicial and executive branch nominees. Take, for example, Brett Talley – a nominee for a U.S. District Court vacancy in Alabama. Mr. Talley was reported out on a party-line vote by the Senate Judiciary Committee in early November 2017. Later that month, it was reported that Mr. Talley failed to disclose to the Senate offensive blog comments and potential conflicts of interest. Mr. Talley ultimately withdrew, but had the 2-hour post-cloture rule been in place when Mr. Talley was voted out of committee and pending on the Senate floor, he likely would have been confirmed before this disqualifying information came to light. And Mr. Talley is hardly an exception. Over 25 of President Trump’s nominees have had to withdraw due to inadequate vetting.<sup>3</sup> Now is not the time to weaken the Senate’s consideration of these powerful appointments.

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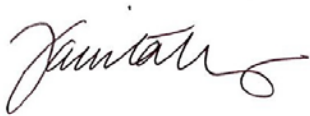
<sup>2</sup> <https://www.cnn.com/interactive/2017/politics/trump-nominations/>.

<sup>3</sup> [https://en.wikipedia.org/wiki/List\\_of\\_Donald\\_Trump\\_nominees\\_who\\_have\\_withdrawn](https://en.wikipedia.org/wiki/List_of_Donald_Trump_nominees_who_have_withdrawn).



Passage of S. Res. 355 would represent yet another abuse of Senate tradition and procedure by Senate Republicans. Like the nuclear option in April 2017 that paved the way for the confirmation of Neil Gorsuch to the Supreme Court, passage of S. Res. 355 would represent another instance of breaking Senate rules in order to confirm President Trump's extreme nominees. For the foregoing reasons, The Leadership Conference urges you to oppose S. Res. 355. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel and Legal Director, at (202) 466-3311.

Sincerely,



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President & CEO



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Executive Vice President for Policy