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Hours after Justice Antonin Scalia died on Saturday, Senate Majority Leader Mitch McConnell (R-Ky.) [said](#), “The American people should have a voice in the selection of their next Supreme Court justice. Therefore, this vacancy should not be filled until we have a new President.” Similar statements followed from other Republican senators. Democrats decried the delay as “unprecedented,” and political commentators wondered whether Republicans could indeed pull off delaying until next January.

It’s true that the GOP’s historical case for an 11-month delay is shaky at best. And it’s true that, [as my Post colleague Catherine Rampell documented this week](#), Republicans have been obstructing President Obama’s judicial nominees long before his last year in office.

But the debate over whether Republicans can delay the nomination for a year obscures how the Scalia fight could change the balance of power between the executive and legislative branches.

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Suppose one party emerges from 2016 in control of the White House and the Senate. Barring a big change before Election Day and a sweep of truly historic proportions, the minority party will still have enough seats to filibuster whomever is nominated. Will the majority party — Democrat or Republican — get rid of the filibuster for Supreme Court nominees? In similar circumstances in 2005, McConnell [supported this “nuclear option” as Senate majority whip](#). In 2013, Democrats frustrated with blatant GOP obstruction, ditched the filibuster for non-Supreme Court judicial nominees. In [an op-ed for The Post on Tuesday](#), Senate Minority Leader Harry Reid (D-Nev.) wrote of excepting Supreme Court nominees, “Maybe that was a mistake.”

In recent decades, as the White House and the Senate have changed hands, the party out of the White House has voted against presidents’ nominees in increasingly large numbers and with increasing frequency. Once, it took someone as extreme as Robert Bork to face united opposition. (Some conservatives have made Bork into a martyr to Democratic partisanship. It’s true that they objected — to a nominee who, among other things, did not recognize a constitutional right to [privacy](#) or [equal protection](#)

[for women](#) and who had called the Civil Rights Act state coercion of “[unsurpassed ugliness.](#)” No wonder [six Republicans voted against him.](#)) Under George W. Bush and Barack Obama, filibustering nominees of the opposing party increasingly became standard practice. If in 2017 one party controls both the White House and Senate, that party's voters likely will demand an end to the filibuster if it's the sole obstacle to a nomination. But the potential of a Senate filibuster has served in the past as a useful, often unseen check on presidents when choosing whom to nominate, and the demise of the filibuster would increase the executive branch's share of power over the makeup of the Supreme Court.

The other, perhaps more unprecedented scenario would greatly alter the current balance of legislative and executive power in the other direction. In this scenario, either McConnell & Co. decide to give Obama's nominees a floor vote, or Hillary Clinton or Bernie Sanders is elected president while Senate Republicans hold their majority. (In the latter instance, by the way, it should be noted that Clinton or Sanders likely will be forced to spend their first 100 days, when a president's political capital is traditionally highest, on a Supreme Court fight, rather than on legislative priorities that could use the boost.) Senate Republicans have built their majority on unbending opposition to everything Obama and Democrats do, and given the importance of preserving a conservative-majority court, GOP voters expect nothing less. Even if McConnell lets the Senate vote, Sen. Ted Cruz (R-Tex.) won't miss a chance for a grandstand filibuster, and McConnell won't go nuclear for a Democratic nominee. Democrats might be able to convince a few purple-state Republicans to vote for a Democratic president's choice, but how conservative would Obama's or Clinton's or Sanders's nominee have to be to break a filibuster?

Article II, Section 2 of the Constitution says the president appoints Supreme Court nominees with “the advice and consent of the Senate.” There's no dictionary or precedent that defines “advice and consent” as “the Senate picks your nominee for you.” But if, under huge pressure from the conservative base, enough Republicans think otherwise, the legislative branch will have unprecedented control over the next Supreme Court nomination.

If the fight over filling Scalia's seat ends the filibuster on Supreme Court appointments, or if the GOP majority rejects Democratic nominees until a conservative (or at least someone who leans conservative) is chosen, that will alter checks and balances at the heart of the American political system. So buckle up: The debate over whether Republicans can block a high-court nominee in an election year is only a warmup. The bigger fight is just getting started.

James Downie is The Washington Post's Digital Opinions Editor. He previously wrote for The New Republic and Foreign Policy magazine.

