

..and he's not the only one.

You can be forgiven for not knowing the name of [Arunava Majumdar](#): he is a distinguished energy engineer who currently runs the Department of Energy's Advanced Research Projects Agency - Energy (ARPA - E), and who until a few days ago was President Obama's nominee (since last November) to become DOE's new Undersecretary. It was a great appointment. By all accounts, Majumdar did a terrific job at ARPA - E. He even received the support of a few Republicans.

[And Rand Paul decided to hold up the appointment](#). I have no idea why: maybe because Majumdar did not suitably genuflect at the shrine of *Atlas Shrugged*, or endorse Paul's ridiculous theories about federal jurisdiction, or perhaps — as Dan noted the other day — because confirming any nominee to Energy would undercut the growing conservative effort to kill renewable energy. Seeing that the nomination was going nowhere, Majumdar withdrew and resigned from his ARPA - E post, saying he wanted to return to the Lawrence Berkeley Laboratory to spend more time with his family (a desire that somehow did not occur six months ago).

It's possible that this was just a "hold", which is another way of saying that a senator will gum up the works of the Senate, preventing it for a whole week from acting on anything. But I doubt it: reports indicate that it was going to be filibustered by Republicans, probably because Majumdar actually did a good job. This is a real hit: Majumdar's departure is a "real kick in the stomach," [said former Rep. Bart Gordon](#), who as Chair of the House Science Committee helped create ARPA - E.

And this is why Paul, and the entire GOP caucus, are really constitutional perverts. It's one thing to say that the Senate must give its advice and consent to executive branch appointments: it's quite another to say that a minority of the Senate can block those appointments after the entire Congress has created a government branch and told the President to execute the laws. The President has the constitutional obligation to "take care" to see to it that the laws are faithfully executed: allowing filibusters of executive branch nominations subverts that obligation.

This should not be confused with the Republicans' effort a few years ago to promote the "[nuclear option](#)" on *judicial* appointments. For judicial appointments, considerations are different. Judges' life tenure is obviously one, but more importantly, it does not necessarily impinge on the the President's constitutional obligations to execute the law for the Senate to block judicial appointments.

It's premature to say that filibusters of executive branch appointments are unconstitutional: Article I, Section 5 of the Constitution gives each House of Congress the right to make its own rules, and the Senate's Rule XXII allows for filibusters. Instead, it is better to use a canon of construction for appointable positions: any statute creating an executive branch appointment should be presumed to call for majority rule on appointments unless it explicitly says otherwise. If a Senate majority wishes to confirm someone, the Senate Majority Leader should ask the Presiding Officer for an opinion on the governing statute. Without any explicit language allowing for a filibuster, the statute should be read as calling for an up-or-down vote.

Over the long haul, this will allow for *more* Congressional input, because if these types of roadblocks continue, Presidents will simply make greater and greater use of recess appointments and circumvent Congress altogether.

As the nation's political parties become more polarized — a trend that can almost exclusively be laid at the doorstep of the Republican Party — breaking through the executive branch appointment logjam is necessary. [As Time's Fareed Zakaria has noted,](#)

This polarization has resulted in paralysis. More than two years into the Obama Administration, hundreds of key positions in government remain vacant for lack of Senate confirmation. The Treasury Department had to handle the global financial crisis, recession, bank stress tests and automaker bailouts, as well as its usual duties, with about a dozen of its senior positions—almost its entire top management—vacant. Senate rules have been used, abused and twisted to allow constant delay and blockage. The filibuster, historically employed about once a decade, is now a routine procedure that allows the minority to thwart the will of the majority. In 2009, Senate Republicans filibustered a stunning 80% of major legislation.

This is no way to run a country.

Whenever someone proposes reform of Senate procedure, a fair question to ask is: okay, but what if the show were on the other foot? What if you were in the minority? Wouldn't you want a filibuster then? My answer is unequivocal: *no*. If a Republican ([really](#)) wins the Presidency, then he has a right to fill his administration without being blocked by an unrepresentative minority.

As Henry Adams noted in his autobiography, “The true test of a reforming President is to return the Senate to decency.” More than a hundred years later, that is still the task.