S. 1038

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''No Net Loss of Private Land Act''.

SEC. 2. LIMITATION ON ACQUISITION OF LAND.

(a) IN GENERAL.—Notwithstanding any other law, the United States may acquire an interest in 100 or more acres of land within a State described in subsection (c) only if, before any such acquisition, the United States disposes of the surface estate to land in that State in accordance with subsection (b).

(b) DISPOSITION OF SURFACE ESTATE.—The disposition of the surface estate in land by the United States qualifies for the purposes of this section if—

(1) the value of the surface estate of the land disposed of by the United States is approximately equal to the value of the interest in land subject to this section that is to be acquired by the United States, as determined by the head of the department, agency, or independent establishment concerned; and

(2) the head of the department, agency, or independent establishment concerned certifies that the United States has disposed of land for the purpose of this section.

(c) AFFECTED STATES.—A State is described in this section if—

(1) it is 1 of the States of the United States; and

(2) 25 percent or more of the land within that State is owned by the United States.

(d) ACQUISITION.—For the purpose of this section, the term ''acquire'' includes acquisition by donation, purchase with donated or appropriated funds, exchange, devise, and condemnation.

(e) APPLICABILITY.—This section does not apply to—

(1) any land held in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation;

(2) real property acquired pursuant to a foreclosure under title 18, United States Code;

(3) real property acquired by any department, agency, or independent establishment in its capacity as a receiver, conserver, or liquidating agent which is held by that department, agency, or independent establishment in its capacity as a receiver, conserver, or liquidating agent pending disposal;

(4) real property that is subject to seizure, levy, or lien under the Internal Revenue Code of 1986; or

(5) real property that is securing a debt owed to the United States.

(e) WAIVER.—The head of a department, agency, or instrumentality of the United States may waive the requirements of this section with respect to the acquisition of land by that department, agency, or instrumentality during any period in which there is in effect a declaration of war or a national emergency declared by the President.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 138—TO AMEND RULE XXII OF THE STANDING RULES OF THE SENATE RELATING TO THE CONSIDERATION OF NOMINATIONS REQUIRING THE ADVICE AND CONSENT OF THE SENATE

Mr. FRIST (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. STEVENS, Mr. SANTORUM, Mr. KYL, Mrs. HUTCHISON, Mr. ALLEN, Mr. LOTT, Mr. HATCH, Mr. CORNYN, and Mr. CHAMBLISS) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 138

Resolved, That rule XXII of the Standing Rules of the Senate is amended—

(1) in paragraph (2), by striking ''Notwithstanding'' and inserting ''Except as provided by paragraph 3 and notwithstanding''; and

(2) by adding at the end the following:

''3. (a) The provisions of this paragraph shall apply to the considerations of nominations requiring the advice and consent of the Senate.

''(b)(1) Notwithstanding the provisions of rule II or rule IV or any other rule of the Senate and after a nomination requiring the advice and consent of the Senate has been pending before the Senate for at least 12 hours, a motion signed by 16 Senators to bring to a close the debate on that nomination may be presented to the Senate and the Presiding Officer, or clerk at the direction of the Presiding Officer, shall at once state the motion to the Senate, and 1 hour after the Senate meets on the following calendar day but 1, he shall lay the motion before the Senate and direct that the clerk call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question: 'Is it the sense of the Senate that the debate shall be brought to a close?'.

''(2) If the question in clause (1) is agreed to by three-fifths of the Senators duly chosen and sworn then the nomination pending before the Senate shall be the unfinished business to the exclusion of all other business until disposed of.

''(3) After cloture is invoked, no Senator shall be entitled to speak in all more than 1 hour on the nomination pending before the Senate and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. No dilatory motion shall be in order. Points of order and appeals from the decision of the Presiding Officer shall be decided without debate.

''(4) After no more than 30 hours of consideration of the nomination on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The 30 hours may be increased by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to extend time, specified above, may be made in any 1 calendar day.

''(5) Notwithstanding other provisions of this rule, a Senator may yield all or part of his 1 hour to the majority or minority floor managers of the nomination or to the Majority or Minority Leader, but each Senator specified shall not have more than 2 hours so yielded to him and may in turn yield such time to other Senators.

''(6) Notwithstanding any other provision of this rule, any Senator who has not used or yielded at least 10 minutes, is, if he seeks recognition, guaranteed up to 10 minutes, inclusive, to speak only.

''(c)(1) If, upon a vote taken on a motion presented pursuant to subparagraph (b), the Senate fails to invoke cloture with respect to a nomination pending before the Senate, subsequent motions to bring debate to a close may be made with respect to the same nomination. It shall not be in order to file subsequent cloture motions on any nomination, except by unanimous consent, until the previous motion has been disposed of.

''(2) Such subsequent motions shall be made in the manner provided by, and subject to the provisions of, subparagraph (b), except that the affirmative vote required to bring to a close debate upon that nomination shall be reduced by 3 votes on the second such motion, and by 3 additional votes on each succeeding motion, until the affirmative vote is reduced to a number equal to or less than an affirmative vote of a majority of the Senators duly chosen and sworn. The required vote shall then be a simple majority.''.

Mr. HATCH. Mr. President, I rise today to offer my support for the introduction of this resolution which offers a more than reasonable proposal to fix a confirmation process that Members on both ides of the aisle agree is broken.

Simultaneous filibusters of two circuit court nominees who would clearly be confirmed in up-or-down votes are unprecedented. From what I understand, the minority has plans for even more filibusters of judicial nominees. The resulting politicization of the confirmation process threatens the untarnished respect in which we hold our third branch of Government—the one branch of Government intended to be above political influence.

There is also a significant constitutional consideration at stake here. In its enumeration of Presidential powers, the Constitution specifies that the confirmation process begins and ends with the President. The Senate has the intermediary role of providing advice and consent. Here is the precise language of article II, section 2:

> The President . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law[.]

There is no question that the Constitution squarely places the appointment power in the hands of the President. As Alexander Hamilton explained the The Federalist No. 66:

> It will be the Office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice he may have made.

It is significant that the Constitution outlines the Senate's role in the appointments process in the enumeration of Presidential powers in article II, rather than in the enumeration of congressional powers in article I. This choice suggests that the Senate was intended to play a more limited role in the confirmation of Federal judges.

Hamilton's discussion of the appointments clause in The Federalist No. 76

supports this reading. Hamilton believed that the President, acting alone, would be the better choice for making nominations, as he would be less vulnerable to personal considerations and political negotiations than the Senate and more inclined, as the sole decision maker, to select nominees who would reflect well on the presidency. The Senate's role, by comparison, would be to act as a powerful check on ''unfit'' nominees by the President. As he put it, ''[Senate confirmation] would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.'' This is a far cry from efforts we have seen over the past couple of years to inject ideology into the nominations process, and to force nominees to disclose their personal opinions on hot-button and divisive policy issues like abortion, gun control, and affirmation action.

Historically, deliberation by the Senate could be quite short, especially when compared to today's practice. Take, for example the 1862 nomination and confirmation of Samuel F. Miller to the U.S. Supreme Court. He was nominated, confirmed, and commissioned all on the same day! The Senate formally deliberated on his nomination for only 30 minutes before confirming him. His experience was not the exception. Confirmations on the same day, or within a few days, of the nomination were the norm well into the 20th century.

Contrast the nominations of Miguel Estrada and Priscilla Owen. They were appointed 2 years ago and have yet to be afforded an up-or-down vote by the Senate. Mr. Estrada has now endured six cloture votes more than 3 months after debate on his nomination began. Justice Owen's nomination has been subjected to two cloture votes. Clearly, this is a far cry from the role for the Senate that the Framers contemplated. What was enumerated in the Constitution as advice and consent has in practice evolved to negotiation and cooperation in the best cases, and delay and obstruction in the worst cases—like that of Mr. Estrada and Justice Owen.

The Estrada and Owen nominations illustrate what is wrong with our current system of confirming nominees. Despite a bipartisan majority of Senators who stand ready to vote on these nominations, a vocal minority of Senators is precluding the Senate from exercising its advice and consent duty. This is tyranny of the minority, and it is unfair.

It is unfair to the nominee, who must put life on hold while hanging in endless limbo. It is unfair to the judiciary, our co-equal branch of Government, which needs its vacancies filled. It is unfair to our President, who has a justified expectation that the Senate will give his nominees an up-or-down vote. And it is unfair to the majority of Senators who are prepared to vote on this nomination.

Many of my colleagues, both Republicans and Democrats, agree that the confirmation process is broken. Senator FEINSTEIN stated in a recent letter to the White House that the judicial confirmation process is ''going in the wrong direction'' and is potentially ''spiral[ing] out of control.'' Senator SCHUMER has also indicated that his goal is to repair the ''broken'' judicial confirmation process and the ''vicious cycle'' of ''delayed'' Senate nominees.

The resolution submitted today sets forth a proposal that strikes a balanced solution by allowing for ample, yet not endless, debate on nominations. It provides that cloture may be filed only after a nomination has been pending before the Senate for a minimum of 12 hours. Sixty votes are required to invoke cloture on the first motion. After that, the number of required votes on successive cloture motions would decrease to 57, then to 54, then finally to a simple majority of Senators present and voting. A successive cloture motion cannot be filed until disposition of the prior cloture motion, thereby ensuring that a nomination cannot be confirmed by a simple majority vote until a minimum of 13 session days have elapsed.

This proposal has its roots in S. Res. 85, which was submitted by Senator MILLER on March 13 of this year. In addition, it is similar to a 1995 proposal of Senator HARKIN and Senator LIEBERMAN, which also provided for graduated vote requirements to invoke cloture. In support of their proposal, Senator HARKIN stated, ''I may not agree with everything that Republicans are proposing, but they are in the majority and they ought to have the right to have us vote on the merits of what they propose.'' With regard to judicial nominations, I could not agree more.

Senator HARKIN also cited the research of a bipartisan group named ''Action Not Gridlock,'' which commissioned a poll in the summer of 1994 showing that ''80-percent of independents, 74-percent of Democrats, and 79-percent of Republicans said that when enough time was consumed in debate, that after debate a majority ought to be able to get the bill to the floor. That a majority ought to be able, at some point, to end the debate.'' I would be surprised if a similar poll today would yield substantially different results. I think that the American people understand the fundamental injustice of a minority's ability to block an up-or-down vote on nominations.

In support of their 1995 proposal, Senator LIEBERMAN stated, ''Some say there is a danger of a tyranny of the majority. I say that there is a danger inherent in the current procedure of a tyranny of the minority over the majority, inconsistent with the intention of the Framers of the Constitution.'' Today, the ''tyranny of the minority'' to which Senator LIEBERMAN referred over 8 years ago is in effect and wielding the filibuster in a most unjust manner against President Bush's exceptional nominees who have bipartisan support. I support today's resolution because it will dilute the tyrannical power of the filibusters against these nominees.

I have alluded to my frustrations with the current filibusters of President Bush's nominations. But the bottom line is this: many of us agree that we must try to repair the broken confirmation process. A bipartisan majority of Senators stands ready to vote on the two nominees who are currently being filibustered. This resolution is a reasonable accommodation that preserves the opportunity for extended debate, yet allows Senators to, eventually, do their duty and vote. I hope that my colleagues will support this resolution.

SENATE RESOLUTION 139—EXPRESSING THE THANKS OF THE SENATE TO THE PEOPLE OF QATAR FOR THEIR COOPERATION IN SUPPORTING UNITED STATES ARMED FORCES AND THE ARMED FORCES OF COALITION COUNTRIES DURING THE RECENT MILITARY ACTION IN IRAQ, AND WELCOMING HIS HIGHNESS SHEIKH HAMAD BIN KHALIFAH AL-THANI, EMIR OF THE STATE OF QATAR, TO THE UNITED STATES

Mr. SUNUNU submitted the following resolution; which was considered and agreed to:

S. RES. 139

Whereas Qatar is a longstanding ally of the United States in the Middle East region;

Whereas the people of Qatar graciously hosted United States Armed Forces and the armed forces of coalition countries during the recent military action in Iraq;

Whereas the United States and Qatar will continue to build upon this military cooperation;

Whereas Qatar continues to grow in its economic and strategic defense cooperation with the United States and its allies;

Whereas the people of Qatar voted on April 29, 2003, on a referendum approving the establishment of their first Parliamentarian Constitution;

Whereas years of democratic reform, including the establishment of a parliament based on universal suffrage, development of greater freedom of the press, and evolution of a free market have greatly strengthened the bonds between our two nations;

Whereas an unwavering commitment to the development of the education of its citizens reinforces Qatar's path toward democracy; and

Whereas Doha, the capital of Qatar, hosted in November of 2001 the Fourth World Trade Organization Ministerial Conference, where a number of agreements expanding our defense, commercial, and cultural ties were signed: Now, therefore, be it

Resolved, That the Senate—

(1) expresses thanks to the people of Qatar for their support of United States Armed Forces and the armed forces of coalition countries during the recent military action in Iraq;