

Washington, John Rutledge, was rejected by the Senate for the Supreme Court—rejected by the Senate. In that Senate were I believe eight Founding Fathers, the people who wrote the Constitution, rejecting the President's choice.

We have, in a certain sense, people way out of the mainstream, way over—a small group—telling the Republican Party in the Senate and telling the President that they must have all the judges, including the most extreme. Because, after all, it was only the most extreme we rejected, judges who believe, for instance, that the New Deal was a socialist revolution and should be undone; judges who believe zoning laws are unconstitutional; judges who believe the purpose of a woman should be to be subjugate herself to a man; judges who believe slavery was God's gift to white people.

These are some of the judges we have rejected. It was not based on any one particular issue. People say this is all code for abortion. It is not. I have voted for I believe it is about 190 of the judges. The overwhelming majority do not agree with me on abortion, but I believe they met the ultimate test, that they would interpret the law, not make law. Thus, even though they had strongly held beliefs on their own, they would be good judges. The 10 we rejected failed that test. They feel so passionately that they have to impose their views.

One of them, Priscilla Owen of Texas, was criticized repeatedly by conservative members of her own court, the Texas Supreme Court, for placing her interpretation of law ahead of the standard interpretation, the interpretation everybody accepted.

So we were proud to do our constitutional duty and reject these judges, judges we were not consulted about, judges who were way out of the mainstream.

Now, because of the demands of a few—way over, way out there—it seems the majority leader is pushing the so-called nuclear option. The problem is a large number, a good number of people on the other side, do not want to do the nuclear option. They know it would change the rules in the middle of the game. You don't change the rules in the middle of the game because you cannot get your way on every single judge. Our Constitution, our system of laws, is too hallowed, is too important to do that.

These wavering Republican Senators know the Senate has been the repository of checks and balances. That is why we have not done the nuclear option yet. I have to say I wish the majority leader would not be moving it. He should as a Senator stand up for the rights of the Senate. He should as an American stand up for the rights of the American people. But that has not happened.

Yesterday they had to call the heavy guns in. Karl Rove, a member of the executive branch, told the Senate Republicans there should be no compromise.

It is quite natural, by the way, that the White House would not want a Senate with checks and balances. This is not simply true of Republican Presidents, it is true of all Presidents, whether they be Democrat or Republican. They want to have their way. They regard the legislature, and particularly the Senate, as sort of a pesky obstacle to getting their way.

But the wisdom of our Republic has shown that when the Senate does slow things down, when the Senate does invoke checks and balances, the Republic is better off.

Now we have Karl Rove telling the Senate how they ought to act—how we ought to act—to change a tradition of 200 years.

Senator REID has said publicly that the President told him the White House would stay out of this. That is clearly not the case. The White House is not staying out of this and they are trying to aggrandize executive power. The American people, though, are not buying it. There is a story today in the Washington Post that shows “. . . by a 2 to 1 ratio”—that is pretty strong, that is more than the filibuster amount—

the public rejected easing the Senate rules in a way that would make it harder for Democratic Senators to prevent final action on Bush's nominees. Even many Republicans were reluctant to abandon current Senate confirmation procedures. Nearly half opposed any rule changes, joining eight in 10 Democrats and seven in 10 political independents. . . .

The American public may not follow minute to minute, day by day, what we do on this floor, but they have a pretty good nose to smell what is going on. What they smell is a whiff of extremism, a whiff of “I can't get my way so I change the rules in the middle of the game,” a whiff of “not simply a fight of the moment over a particular judge but rather a desire not to live with the traditions of this body and this Republic, which involves compromise and mediation.”

Honestly, when I recommended to our caucus early on that we filibuster a few of the judges and then later that we prevent and stand up to the nuclear option no matter what it took, I thought we would lose politically. I thought the argument: “Well, have 51 votes on everything” would prevail. But the American people's wisdom is large, deep, and hard to fool. The American people have said they understand what is going on. When the Republicans were in charge, they didn't allow judges to come out. We are not in charge now and the filibuster is a way of mitigating the President's desire to put whomever he wants on the bench and that the filibuster is appropriate.

I do not believe what some on the other side say, that the public is with the Democrats because they have gotten their message out ahead of us. Please. The public is with the Democrats in this case, not because they are Democratic and not because they may agree with the stand or disagree with

the stand of each of the judges we have rejected—although I suspect that would be the case if they knew—the public is with us because they understand fundamentally the checks and balances that are so important in this Republic and that because a President gets 51½ percent of the vote he doesn't always have to get his way, particularly when it comes to choosing the third, unelected—only unelected branch of Government.

So Mr. Rove can order Senators not to compromise. I hope and pray the Senators will not take direction from the White House on something where the interests of the White House, whatever party the President might be, are different from those of the Senate and frankly different from the Republic's—and I believe they will not.

The wisdom of the American people is strong. I let my colleagues know, if they should try to invoke the nuclear option and it succeeds, we will have no choice but to enforce the Senate rules and try to bring up issues the American people want us to bring up: the high cost of energy and gasoline, health care, education. We do not usually do that because of comity in the Senate. After all, the other party is the majority party.

But if they are not respecting the rights of the minority, as a majority, they do not deserve that same deference. What we will do is not shut down the Senate, not not show up. We will, rather, use the remaining rules at our disposal to bring up issues the American people care about.

Again, my plea to my colleagues on the other side—I know many of them have doubts about this nuclear option but are under tremendous pressure—resist the entreaties of the executive branch, in this case in the personification of Mr. Rove, stand tall, stand firm. Do not change the rules in the middle of the game; protect the sacred checks and balances at the core of the Republic by rejecting this trampling on the rules, the so-called nuclear option.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from North Dakota is recognized.

Mr. DORGAN. How much time remains on our side?

The PRESIDING OFFICER. There are 18 minutes.

DANGEROUS POLITICAL INTERSECTION

Mr. DORGAN. Mr. President, everyone in this country knows what a dangerous intersection is. We all drive and understand the consequences of a dangerous intersection. We are coming to a dangerous intersection in American politics, especially in the Congress: first, by actions that are, on their face, wrong and are harmful to our country; and second, by inaction on matters that cry out for attention—but, again, get none in this Congress and by this administration.

We face a different kind of politics than most have experienced before when we see prominent members of the Congress participate in exercises with outside groups who suggest those who are not with them on the issues are people who lack faith, are people who are not people of faith. Those are dangerous grounds to tread on politically. Yet they do it and do it willingly.

As I was listening to my colleague, I remembered going to a puppet show my daughter participated in during grade school some years ago. Of course, in a puppet show you see only the puppet; you do not see who is behind the black cloth. There are puppet shows going on here in the Congress, of course, and in the administration. Perhaps today's USA Today tells us a little bit about who is behind the screen. The chief political adviser to the White House, Mr. Karl Rove, says there will be no compromise on this issue of judges. It seems to me, a White House that has said it is not involved in this issue is clearly neck deep in this issue, and perhaps is the one behind the screen in this case. Whether it is on this so-called nuclear option with respect to the vote on the judges in the Senate or the Social Security debate going on regarding whether we should privatize Social Security as recommended by the White House, Mr. Rove has played a very prominent role.

To take Social Security for a moment, the memorandum leaked in January from the White House by the chief strategist on this issue, who works for Mr. Rove, said that, for the first time in six decades, we have a chance to win on Social Security.

What does that mean? It means they have never liked Social Security. They want to take Social Security apart. That memorandum also said we have to claim there is a crisis and convince people there is a crisis in Social Security. Of course, it is not working because there is not a crisis in Social Security which has been and is an enormously important program, lifting tens of millions of senior citizens out of poverty in this country. The fact is that Social Security will be fully solvent until President George W. Bush is 106 years old. That is hardly a crisis.

People are living longer, and we may need to make adjustments in Social Security as we move along, but it does not require major surgery. And, the President's proposal to borrow \$5 trillion and then stick it in the stock market and cut Social Security benefits and sit back and hope, is not much of a plan.

It is interesting to me that the American people, in poll after poll after poll, are rejecting this. I was at a Social Security forum over the weekend. We did them in several States. A fellow came up to us at the forum and said, I am 88 years old. I am blind, and Social Security is all I have. I think people are very concerned about this notion of sticking this money in private accounts and just hoping, after

you have borrowed trillions, hoping somehow things will be better.

Whether it is Social Security and private accounts and the attempt to take the Social Security system apart or this issue of the nuclear option because the majority party and the President have gotten only 95 percent of the Federal judges they want, these intersections are dangerous.

Let me describe the danger of the intersection with respect to the so-called nuclear option. The Constitution of the United States is clear about judges. In fact, originally when they put this Constitution together, they felt perhaps they would have the Senate or the Congress appoint judges. Instead, there is a two-step process. The President decides who shall be nominated to the Senate for a lifetime appointment on the Federal bench to the Federal courts and then the Senate decides whether they will support that nomination. It is called advice and consent. This President, President Bush, has sent the Senate 215 nominees to serve for a lifetime on the Federal court. We have supported 205 of them. That is 95 percent. But that is not enough. The President and the majority party say we want it all.

I remember people like that on the playground when I was in school. They want it all. If they do not get it all, they are going to take their bat and ball and go home. In this case, if they do not get it all, they will violate the Senate rules in order to change the Senate rules. How will they violate the rules? They will overturn precedent in the Senate in terms of how the rules are changed. It takes 67 votes to change the rules of the Senate. The so-called nuclear option devised by the majority party is a strategy by which they will overturn the ruling of the Parliamentarian that the rules are being violated, and by a majority vote, overturn the rule and effectively change the rules of the Senate by violating the rules of the Senate. Some people do not care about that. That is fine. If you care a lot about the future of this country, if you care a lot about democracy, if you care about making a democratic government work by compromise, you ought to care a lot about this.

It is arrogant. It reflects the feeling of a party that controls the White House, the House, and the Senate, that they must get their way on everything.

The reason a 60-vote requirement—that is, a filibuster—is useful to the workings of democracy is because it requires compromise. It requires Members to reach a threshold of 60 votes in the Senate, which requires you to reach across the aisle and talk to people of the other party. That is a good thing, not a bad thing. Compromise is a good thing. Bipartisanship is a good thing, not a bad thing. We have people now who look at it as something that is awful. We want to take a partisan group that has 51 votes and is muscle-bound—it is politics on steroids—and

ram it through the Congress and violate the rules in order to change the rules. It is not what this country should expect from the Congress.

Here is today's paper: "Filibuster Rule Change Opposed." It is interesting that there is a broad center of common sense. There always has been. Over two centuries, this country's political system moves one direction and then the other direction. But there is a strong magnetic pull back to the center. That magnetic pull comes from a reservoir of common sense all across this country of people who basically know what is the right thing. They know from their school days, from their civic organizations, they know from their everyday lives you do not violate the rules to change rules. We have certain rules. You do not violate rules to change rules. People know that inherently, and they also know the consequences of one-party rule that says it is our way and that is the only way and we refuse to compromise on anything.

For that reason, it is quite clear that two-thirds of the American people have that reservoir of common sense and are expressing it. I hope the majority party will listen. I especially hope Mr. Rove and the White House, who says there will be no compromise, will understand that compromise is what makes this Senate work.

In the McCullough book about John Adams, as I told my colleagues previously, he would write to Abigail—because John Adams was in Europe, representing our country in England and France as they tried to put this new country together—he would write to his wife, Abigail, and ask the question, plaintively: Who will be the leaders? Who will emerge as the leaders to help form this new country of ours? From where will the leadership come? And then in the next letter to Abigail, he would ask the question in different ways again: Who will be the leaders? Then he would say: It appears there is only us. There is me, there is George Washington, there is Thomas Jefferson, Ben Franklin, Mason, Madison.

In the rearview mirror of history, the only "us" is some of the greatest human talent that has ever been assembled that created quite a remarkable country. For 2 centuries, Americans have asked the same question: From where will the leadership come? How will the leadership emerge to steer this country and provide direction for this great democracy of ours? In almost every case, the American people have been surprised by those who step forward.

We have been enormously blessed by wonderful leaders—Republicans, Democrats, conservatives, liberals—leaders who step forward at the right time, at the right moment, to say: Here is where America needs to move. Here is how we need to improve and strengthen this great democracy of ours.

I ask again, and I think America asks again, with the backdrop of these questions, violating the Senate rules to

change Senate rules, taking apart the most successful program we have had in this country's history, the Social Security Program, the American people are asking, as they answer these polls: Where is the leadership? Where will the leadership come from to put this country on track?

We do have crisis. It is not Social Security. We have a bona fide crisis in health care. Prescription drug costs, health care costs are going straight up, and no one is doing anything about it. We have a crisis in jobs. We have the biggest trade deficit in human history, and we are choking on it. We have massive numbers of American jobs moving every single day overseas. It is an epidemic because American workers are being told by their multinational employers: You either compete with 30-cent labor from China or we are sorry, it is over for you. That job goes to China for 30 cents an hour, working 7 days a week, 12 to 14 hours a day, often kids. We have an epidemic in jobs and trade. We have a serious problem with the largest budget deficits in the history of this country. Yes, that is a crisis.

Last week, we passed an \$80 billion emergency supplemental bill to pay for the costs in Iraq and Afghanistan and not one penny was paid for. The administration that requested it did not suggest it be paid for. Congress did not suggest it be paid for. Just add it to the debt. Send the soldiers to Iraq and bring them back later and have them pay for the debt.

So, yes, we have some crises. Health care, jobs, trade deficit, fiscal policy, energy. Drive to the gas pumps and ask yourself whether there is a problem there. And then we have the Crown Prince of Saudi Arabia going to Texas yesterday to explain how much additional oil they will pump in order to help us with our energy problem. Sixty percent of our oil comes from off our shores, much of it from troubled parts of the world—Saudi Arabia, Iraq, Venezuela, Kuwait.

If, God forbid, tomorrow the pipeline for sending oil to this country from those troubled parts of the world were ruptured, this country's economy would be flat on its back. We are held hostage by oil from off our shores to the extent we have to have the Saudis come to Texas, to the ranch, to explain to us how they are going to help us solve our problems.

The fact is, we do have crises. The operative question is, Where is the leadership? Where is the leadership? Where will it come from to deal with these issues? No, I am not talking about the nuclear option. That is a specious approach, one that will injure this Senate and injure this country. I am not talking about taking Social Security apart—exactly the wrong thing. I am talking about the leadership for things that really matter to American families.

When people are in their homes, sitting at their tables, having supper,

they talk about issues such as: Do I have a good job? Does it pay well? Do I have job security? Do grandpa and grandma have access to good health care? How about the kids, do they have access to doctors when they need it? Are our kids going to a school we are proud of? Do we live in safe neighborhoods? Those are things that are operative in the midst of families' interests about this country and where they live.

I hope very much the majority party will understand what the American people are telling them: Lay off the nuclear option. Accept that 95-percent support for judges nominated by this President, which is a pretty good record. Ninety-five percent, that is a good record. Accept and understand there is an opposition party. They, too, have rights. And accept and understand that compromise is not a bad word. Compromise recognizes that this democracy works when you have bipartisanship, when you reach across the aisle. That is what the 60-vote margin requires us to do, in my judgment. And answer the question, Where is the leadership? Just answer that question, Where is the leadership on issues that matter to American families? My hope is, in the coming days we will see some of that leadership both here in the Congress and also from this administration.

Last, and most importantly, let's not ever hear again that those with whom you disagree are not people of faith. What a shameless thing to be doing, to suggest that your political opponents are people who are not people of faith. This country is better than that. Political debate and dialog can be better than that. And the American people expect and deserve better.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

JUDICIAL NOMINATIONS

Mr. BUNNING. Mr. President, I rise to talk about the broken confirmation process for Federal judges. The Senate faces an unprecedented crisis and is failing the Constitution and the American people.

For the first time in the Senate's history, a minority of Senators is twisting the rules of the Senate to block the will of the majority. They are taking for themselves a power granted only to the President of the United States, the power of nominating judges. Just as disturbing is the fact that the minority is also threatening to shut down the Senate and the people's business if the majority acts to restore Senate tradition and fulfill our constitutional responsibility.

Make no mistake about it, we will restore the Senate tradition of taking up-or-down votes on the President's nominees. Hopefully, the minority will support the nomination process the Senate has practiced for more than 200 years and end the filibuster of judicial nominations. But if the majority of the

Senate must act to restore that tradition, we will do so.

Like many Senators, I spend a lot of time in my home State. I meet with constituents, give speeches to civic groups, and tour manufacturing plants. I have heard a lot about the war in Iraq and Social Security. People talk about gas prices and the economy, education, and health care. But the topic I hear about the most is the importance of confirming judges.

Last November, election day came and the American people spoke. President Bush won reelection by receiving the most votes ever cast for a Presidential candidate. A majority of the American people clearly endorsed his policies and his leadership. So when this Congress convened, I had high hopes that the crisis of judicial nominations was behind us.

I hoped the Senators who obstructed the Senate's business over the past 2 years realized the errors of their ways. After all, they lost seats in the Senate, and their minority leader also was defeated in the last election. I hoped we could turn to voting on President Bush's nominations to the Federal bench. I hoped we would return to the Senate tradition of giving nominees an up-or-down vote.

But it did not take long to realize that was not going to be the case. The minority proudly boasts about their filibustering the President's nominees. And if the majority acts to restore Senate tradition, they say they are going to expand their obstructionism to the entire business of the Senate and shut down the Government.

In article II, section 2 of the Constitution, the President is given the power to nominate judges. And upon advice and consent of the Senate, those nominees shall be placed on the bench.

So the President alone has the power to pick judges. And the Senate has the responsibility to render its advice and consent. That leads to the question of what does "advice and consent" mean? Fortunately, I am not a lawyer or a constitutional scholar. But I can read. And the Framers were pretty clear when they spoke.

First, they said the Senate as a whole is to give its advice and consent. When the Constitution speaks of the Senate as a whole body, it means a majority of the body. The Supreme Court has even stated as much.

Second, the Framers were pretty clear when they required more than a majority to act. For example, they required a two-thirds vote to amend the Constitution. They required a two-thirds vote to convict and remove from office an impeached President or Federal official. But even more telling, in the very same sentence of the Constitution that gives the Senate the duty to render advice and consent on nominations, the Framers also required a two-thirds vote to approve a treaty.

Now, if Framers meant that a supermajority vote was required to approve