

constitutional principles were called into question. They included the separation of powers, checks and balances, the independence of the judiciary, and the negation of the Senate's right to advise and consent. The minority claimed the right to impose a 60-vote threshold before a nominee could pass muster, for that is the number needed to invoke cloture and to break a filibuster. The Constitution doesn't say that. It only requires a majority to confirm. But for a minority spinning novel constitutional theories, the real Constitution took a back seat.

The Republican majority tried first to invoke cloture on each of the judicial nominees, but driven by the minority leadership, the filibusters proved resilient to cloture. Then we introduced a filibuster reform proposal and, with regular order, took it through the Rules Committee, but it died without action because it was sure to be filibustered as well.

So then we turned to the voters in November. The election strengthened our majority. But the minority ignored the election and even dug their heels in further. Faced with the certainty that the minority would expand its filibusters, we faced a critical choice: either accept the filibuster power grab as the new standard for the Senate or restore the tradition of fair up-or-down votes on nominees.

We, as Republican leadership, decided to stand for a principle. That principle is simple and clear. It is clear without equivocation, without trimming. Every judicial nominee brought to the floor shall get a fair up-or-down vote—a simple principle.

The Constitution specifically gives the Senate the power to govern itself. We were fully committed to use that power to establish a process by which a confirmation vote would occur after reasonable debate. This approach has a lot of precedent. We were prepared to use this approach. The minority attempted to demean it by calling it the nuclear option, surrounding it with threats of closure of government and stopping this body from working. But realistically, the nuclear option is what they did. It is what they did when they detonated this filibuster power grab in the last Congress.

The proper term for our response is the "constitutional option" because we would rely on the Constitution's power of self-governance to restore Senate traditions barring judicial filibusters. Against their unprecedented power grab by filibuster—that is what I would call the nuclear option—there is only one antidote that is certain, that would absolutely be effective, and that is the constitutional option.

The moment of truth was to have come yesterday on May 24, but, as we all know, that action was preempted by an agreement among seven Democrats and seven Republicans to forestall use of the constitutional option in exchange for confirmation votes on just three nominees and a promise that fili-

busters would occur only under what are called in the agreement "extraordinary circumstances." I was not a party to that agreement, nor was our Republican leadership. It stops far short of guaranteeing up-or-down votes on all nominees. It stops far short of the principle on which this leadership stands. It leaves open the question of whether someone such as Miguel Estrada, who came to this country as a 17-year-old immigrant from Honduras, worked his way to the top of college and law school, and tried 15 cases at the Supreme Court, who was filibustered again and again and again, filibustered 7 times, would be an extraordinary circumstance.

Now we move on to a new and an uncertain phase. Today, the Senate will happily confirm Priscilla Owen to the Fifth Circuit Court of Appeals. Some of the other nominees will follow her. Priscilla Owen is a gentlewoman, an accomplished lawyer, and a brilliant Texas jurist. She was unconscionably denied an up-or-down vote for not just a few months or a year or 2 years but for 4 years. It was over 4 years ago that she was nominated to this position. The minority has distorted her record. They have cast aspersions on her abilities. They have rendered her almost unrecognizable. She had the fortitude to see the process through. Very late, too late, but finally, she will receive an up-or-down vote and will be confirmed.

Without the constitutional option, Priscilla Owen would have never come to a vote today. Neither would any of the other nominees. The other side made it clear that they would filibuster. Without the constitutional option, judicial filibusters would have become a standard instrument of minority party policy.

The agreement among those 14 is based on trust, a trust that casual use of judicial filibusters is over. Without the constitutional option, the minority would have adhered to the path it was on, and deal brokers would have had no deal to broker.

I am very hopeful now and optimistic, but I am curious what "extraordinary circumstances" will mean.

I am wary, but as Ronald Reagan was fond to say, "Trust but verify." If nominees receive up or down votes and the sword of the filibuster is sheathed, then the Republican leadership can be proud that its focused direction on the constitutional option arrested a dangerous and destructive trend.

If filibusters erupt under circumstances other than extraordinary, we will put the constitutional option back on the table and will implement it. Abraham Lincoln once said that when it is not possible to do the best, it is best to do what is possible. Standing firm for the principle of fair up-or-down votes, we have made real progress. That is something I think we can all celebrate with the up-or-down vote Priscilla Owen receives today. That principle will be our guidepost as the rest of this great constitutional drama unfolds.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

MOVING FORWARD

Mr. REID. Mr. President, I am sorry I was unable to be on the floor for the entire statement of the Republican leader. I think we should just move on. Filibusters are only under extraordinary circumstances. That is when you filibuster. I have been involved in two filibusters during my career of almost 19 years in the Senate. That is two more than most people have been involved in. Filibusters don't happen very often. I think we should move beyond this and get the business of the country done. Let's not talk about the nuclear option any more. Let the Senate work its will. Let's get over this. I have said it is good that it is over with, done.

I wish the distinguished majority leader and I could have worked something out on our own. We didn't. It was done by 14 people, 7 Democrats and 7 Republicans. We have important things to do. There is no question that these five people—actually that is what it boiled down to—are important, but keep in mind they all had jobs. They were all working. It is not as if they were in a bread line someplace. It is unfortunate that during the last 12 years there have been problems with these judges, and I would say problems we never had before.

During the Clinton years, we had more than 60 nominees that never even got a hearing. We talked yesterday about what happened in the Bush years. Let's put that behind us and move on. Let's forget about it and have the Senate work its will. If a problem comes up with a judge, there will be discussions between the Senator from Tennessee and me. If it is necessary, there will be extended debate, and we will talk about it. That is not going to happen very often. We know that. So let's just go about our business. I had a wonderful conversation with the Attorney General of the United States yesterday. He acknowledged, let's move on. I said, fine, let's move on. Let's just move on and not talk about this any more.

I have had extended conversations with the distinguished Republican leader, and the next matter that the Senate is going to be involved in is the Bolton nomination. We are clear on the Democratic side to move forward. I think it would be in the best interest of everybody if we get this agreement made as quickly as possible and we can move forward. That is why I hope my friend from Montana—if somebody comes to the floor and we can clear this in the next little bit, that should be done. I don't want us being blamed

for not being able to go forward with the Bolton nomination.

Mr. FRIST. Mr. President, I appreciate the comment of the Democratic leader. We have agreed on the schedule for the week, and it is really to get to the Bolton nomination as soon as we possibly can. He is talking to Senators on his side, and I have to talk to some on our side. We are both eager to get on to the nomination, which we plan to do today.

I appreciate the Democratic leader coming to encourage us along. We will work things out here shortly on the plans to proceed to the Bolton nomination after the Owen nomination.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Democratic leader or his designee.

The Senator from Montana is recognized.

NOMINATION OF WILLIAM MYERS

Mr. BURNS. Mr. President, now that we have established the “new” guidelines—which have always been there—confirming or rejecting the appointment of judges to the Federal appellate courts, I have come to the floor today to speak in support of William Myers, who is the President’s nominee to the Ninth Judicial Circuit. He, as nominees Owen, Brown, and Pryor, deserves a straight up-or-down vote on the floor of the Senate.

I got a call last night from a constituent in Montana who didn’t understand what an up-or-down vote was on the floor of the Senate. So I explained to her that it is a “yea” or a “nay,” and whoever gathers the most votes wins. That is as simple as I could put it. Of course, she understood.

Bill Myers is a native of Idaho and is a highly respected attorney who is nationally recognized for his work. He is an expert in the area of natural resources, public lands, water and water law and, most importantly, environmental law.

Mr. Myers has been nominated to the Ninth Circuit Court of Appeals, which covers my State, along with Arizona, California, Hawaii, Idaho, Nevada, Oregon and also Guam and the Northern Marianas—by far, the largest of all of the appellate district courts. It is huge. The caseload is huge. And always the caseload has burdened them to where we don’t get a verdict very quickly in the Ninth. Most of us subscribe to the view that justice delayed is justice denied.

From July 2001 to October 2003, Mr. Myers served as Solicitor of the Interior, the chief legal officer and third ranking official in the Department of

the Interior. He was confirmed by the Senate to serve as Solicitor of the Interior by unanimous consent.

Before coming to the Department, Mr. Myers practiced at one of the most respected law firms in the Rocky Mountain region, where he participated in an extensive array of Federal litigation involving public lands and natural resource issues.

From 1992 to 1993, he served in the Department of Energy as Deputy General Counsel for Programs, where he was the Department’s principal legal adviser on matters pertaining to international energy, Government contracting, civilian nuclear programs, power marketing, and intervention in State regulatory proceedings. He really earned his stripes there.

Prior to that, he was assistant to the Attorney General of the United States from 1989 to 1992. In this capacity, he prepared the Attorney General for his responsibilities as chairman of the President’s Domestic Policy Council.

Before entering the Justice Department, Mr. Myers served 4 years on the staff of the Honorable Alan Simpson of Wyoming, where he was a principal adviser to the Senator on public land issues. Everyone, in my memory, remembers with great fondness Senator Simpson of Wyoming.

Mr. Myers is an avid outdoorsman. He is a person who is totally committed to conservation, having served over 15 years of voluntary service to the National Park Service, where he did all the menial jobs—trail work, campsites, and visitor areas, understanding our Park Service and its role in American life.

He has also received widespread support from across the ideological political spectrum. For example, former Democratic Governor of Idaho, and good friend, Governor Cecil Andrus, stated that Myers possesses “the necessary personal integrity, judicial temperament, and legal experience,” as well as “the ability to act fairly on matters of law that will come before him on the court.”

Former Democratic Wyoming Governor Mike Sullivan endorsed Mr. Myers saying that he “would provide serious, responsible, and intellectual consideration to each matter before him as an appellate judge and would not be prone to the extreme or ideological positions unattached to legal precedents or the merits of a given matter.”

That is a pretty high recommendation by two outstanding Governors. By the way, they are Democrats and are good friends of mine.

In addition, in 2004, Mr. Myers was endorsed by 15 State attorneys general, including the current Senator Ken Salazar of Colorado, as well as the Democratic attorneys general of Oklahoma and Wyoming. These chief law enforcement officers stated that Mr. Myers “would bring to the Ninth Circuit strong intellectual skills, combined with a strong sense of civility, decency, and respect for all.”

Finally, in 2004, the Governors of Montana, Alaska, Hawaii, Idaho, and Nevada—five States in the Ninth Circuit—strongly backed Mr. Myers, writing that he had the “temperament and the judicial instincts to serve on the Ninth Circuit.”

The Ninth Circuit needs more judges just to get their work done, to clear out the backlog. They can use some good old rural common sense on that bench as well. He brings that kind of common sense, that kind of balance, those values that are dear to the West.

Out of the Ninth Circuit, we have seen many rulings that have been very troubling to most Americans and some really radical rulings. They are the court that ruled the words “under God” in the Pledge of Allegiance were unconstitutional. Now, to a lot of us, that doesn’t make a lot of sense. But I will tell you, it was evidenced by the continual overturning of many of the Ninth Circuit rulings. That court has been overturned more than any court in the land.

Bill Myers is a man of strong character, who would reestablish balance in the Ninth Circuit by accurately reflecting those commonsense values—in other words, that old country lawyer that came to town who understands people. He will reflect the population from those States, such as my State of Montana, which make up the Ninth Circuit.

I am committed to making sure he gets the vote he deserves on the floor of the Senate.

Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. VITTER). Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 16 minutes 23 seconds remaining.

Mrs. HUTCHISON. I thank the Chair.

Mr. President, we have taken one step forward in the last few days on our advise and consent responsibility in the Senate. I am here today to say we are doing the right thing by one nominee, and that is to have a fair up-or-down vote on Judge Priscilla Owen to be a justice on the Fifth Circuit Court of Appeals after 4 years of waiting for this day.

During this entire process, she has continued to serve on the Texas Supreme Court, demonstrating judicial temperament beyond anything I have ever seen. She has waited patiently, showing courage, determination, and a quiet spirit, the likes of which I have never seen before.

This is a person who would have been confirmed by the Senate four times, though she has never been able to take