



Senators Wrangle Over 'Nuclear Option'

May 16, 2005

The Senate is nearing a showdown over President Bush's judge nominations, with Republicans threatening the so-called "nuclear option" and Democrats warning that they will effectively shut down the Senate.

During President Bush's first term, Democrats used the filibuster technique -- long speeches that prevent a vote -- to block controversial judges President Bush nominated to be on important federal courts.

Currently, it takes 60 out of 100 senators to end a filibuster: Republicans have 55 Senate seats -- a majority, but not the "supermajority" necessary to end a filibuster.

The issue has come to a head now that President Bush has re-nominated judges blocked by Democrats during his first term.

Senate Majority Leader Bill Frist, a Republican from Tennessee who controls what issues the Senate considers, is pushing for a vote on two judges: Priscilla Owen and Janice Rogers Brown.

Democrats object to Owen and Brown because of what they call rigid ideological positions on issues such as gay rights, abortion and affirmative action.

This time, however, Republicans are considering the "nuclear option": a change to Senate rules that would strip Democrats of their ability to filibuster the judicial nominees.

Filibuster history

The filibuster-- which means pirate -- has a long history in U.S. political life. It was used to hold up the Treaty of Versailles at the end of World War I. Southern senators used a 57-day filibuster to stall passage of the Civil Rights Act of 1964, which ended racial segregation in public facilities and the workplace.

The tradition of unlimited floor debate goes back at least as far as the Roman Republic. The Roman Senate allowed it as a ploy to delay or derail proposed legislation.

In the early years of the U.S. Congress, representatives as well as senators could use the filibuster technique.

As the House grew larger, it revised its rules to limit debate, but the tradition continued in the smaller Senate.

It was used as a formal tactic in the 1830s in disputes between President Andrew Jackson and his supporters over the Bank of the United States, according to *The Harvard Journal of Law and Public Policy*.

In the 1930s, Louisiana Democratic Senator Huey Long became famous for his use of the filibuster to block bills that he believed helped the rich at the expense of the poor by reciting Shakespeare and reading recipes. He once held the floor for 15 hours.

South Carolina Republican Strom Thurmond holds the record for the longest filibuster speech -- 24 hours and 18 minutes -- during which he stalled voting on the Civil Rights Act of 1957.

A controversial tactic

Democrats argue that, although the Founding Fathers did not create the filibuster, it upholds the spirit of the Constitution by making sure that the majority party cannot do whatever it wants. Instead, the rules of the Senate push the majority to find consensus and negotiate with the minority party.

Changing that rule, Democrats argue, would fundamentally change the atmosphere of the Senate.

"We're right on the edge of one of the most important moments in the history of the republic," said Democratic Senator Charles Schumer of New York.

Republican leader Frist, on the other hand, says that the Senate has a constitutional duty to either approve or reject the president's judicial nominees and not to stall the voting process with long debates.

"It is time for 100 senators to decide the issue of fair up-or-down votes for judicial nominees after over two years of unprecedented obstructionism," Frist said in a statement.

If Republicans remove the filibuster for judicial nominees, Democrats are threatening to disrupt Senate operations by insisting that all lengthy bills be read aloud and all votes be taken. Usually these steps are skipped by "unanimous consent."

Searching for compromise

At the moment, there is no guarantee Republicans can exercise the nuclear option. Several members of the party have signaled they may not support the move, putting Frist's vote count below the 51 necessary to pull it off.

Republican Senator Chuck Hagel of Nebraska says the president's nominees deserve votes, "but at the same time, I think it's important that we maintain the minority rights tools that assure that the Senate is a little different body, and the filibuster is one of those tools that we use."

Hagel's position has made him and several moderate Republican colleagues targets of conservative interest groups pushing for straight up-or-down votes on all the nominees.

Meanwhile, conservative interest groups have created commercials calling on Americans to demand a vote, and liberal interest groups have answered with ads calling on Americans to save the filibuster.

The aggressive lobbying coupled with the uncertainty in the Republican ranks has increased the pressure on Frist.

If he's unable to secure the votes necessary to initiate the nuclear option, Frist might be forced to cut a deal with his Democratic counterpart, Harry Reid.

So far, several compromises are in the works, but the two leaders have yet to find middle ground.

--Compiled by Monica Villavicencio for NewsHour Extra