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Roll Call April 27, 2005 Wednesday

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April 27, 2005 Wednesday

SECTION: LETTERS

LENGTH: 464 words

HEADLINE: Let Debate Begin

BODY:

Morton M. Kondracke has usefully suggested that the "Senate Should Debate Bush's Judicial Picks" (April 18). The Senate Republican leadership should adjust its strategy to follow this suggestion, and furthermore should take this suggestion to its logical conclusion.

The current leadership strategy of the "nuclear option" is deeply flawed. By purporting to reinterpret the Senate's filibuster rule (Rule XXII) based on the Constitution, the President of the Senate would be making a legal claim that is strained at best. (In my view, the claim that the Constitution prohibits unlimited debate or requires majority voting is without merit.) Given that raw exercise of power by Vice President Cheney and at least 50 Senators, the Democrats in the Senate would have justification to engage in obstructionism. Furthermore, inducing gridlock in the Senate can be done by the Democrats without sweat. For the Republicans to defend themselves in the public arena for having used the so-called nuclear option will be difficult. Names have magic.

A much smarter Republican strategy is to insist upon debate and require the Democrats to be obstructionists if they wish to do so. Specifically, the majority should report out some of the nominations on hold, and bring them to the floor and keep the Senate in session, day and night, until no one wants to debate. Unlike the option of tying the Senate in knots procedurally, which is easy to perform, carrying on a filibuster on a 24/7 basis is not so easy for Democrats to do. I doubt they would have the energy or the nerve to do this for very long for most of the nominations that are now being held up.

In the era of C-SPAN and multiple cable news channels, we haven't seen any lengthy, continuous, 24-hour filibusters in the Senate. I wonder if they are sustainable for more than a few days unless the issue is crystal clear to the public and the stakes are high. The optics of 55 Senate Republicans sitting at their desks waiting to vote would make it hard for Democrats to justify a filibuster because although they would have plenty to say negatively regarding the Bush administration, they would quickly run out of arguments for keeping the Senate in gridlock. Certainly, the Democrats would not be able to claim a normative principle that a vote on a judicial nomination to the lower courts should require a 60-vote majority.

Contrast this "Advice and Consent" scenario with the nuclear option. In the latter, the obstructionist Democrats would have a principle worth fighting for, namely, protest against an

abuse of power by the vice president and the Senate majority.

In summary, Kondracke's insight is a deep one. Let the debate begin.

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