

Senate “compromise” on judicial nominations: Democrats prop up a crisis-ridden administration

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The agreement by 14 US senators Monday to stave off a full-scale battle over the filibuster of Bush judicial nominations is a textbook illustration of how spinelessness and lack of principle on the part of the Democratic Party prop up the Bush administration.

Seven Democrats joined with seven Republicans to craft the compromise agreement. Their aim was to avert a vote on the so-called nuclear option—the Bush-supported plan to change Senate rules so as to ban filibusters of presidential nominations—and thus prevent an explosive and politically unpredictable escalation of the conflict over appointments to the federal courts.

Whichever way it went, as far as the Republican “moderates” and “mavericks” and their Democratic counterparts who forged the agreement were concerned, the vote on the nuclear option could only have a bad outcome. If the bid to ban filibusters were defeated—evidently a serious possibility—the vote would have been a humiliating defeat for the administration and threatened its loss of control in the Senate on such issues as Social Security and a future Supreme Court nomination. Passage of the measure, on the other hand, would have been a suppression of minority rights so blatantly undemocratic as to risk sparking widespread popular opposition to the Republican right.

The Democrats had already retreated from previous threats to use parliamentary tactics to clog up the workings of the Senate in the event the Republicans rammed through a rule change on the filibuster, and focused all their efforts on working out some kind of deal with the handful of Republican senators prepared to buck the White House on the issue.

Their desperation to avoid an open fight on both Senate minority rights and the packing of the federal courts with arch reactionaries has to be viewed within the context of growing popular opposition to the Bush administration and its policies, and a White House confronted with an ever-narrowing base of support.

The most recent opinion polls show Bush’s approval rating at record lows—well below 50 percent—and growing opposition to both his foreign policies—including the Iraq war—and his domestic agenda. A poll published on the eve of the Senate agreement reported that in the conflict over the right to filibuster presidential nominations, the public backed the Democrats over the Republicans by 48 percent to 40 percent.

Far from seeking to mobilize this public discontent against the administration, the Democrats feverishly worked to head off a

confrontation—in effect, shielding Bush and the Republicans from the political consequences of their own policies.

The Democrats act as if the Bush administration were an invincible tower of political strength, when the reality is quite the opposite: it is a politically weak and vulnerable government. But because the Democrats represent, in the end, the same basic class interests as the Republicans, the last thing they want is a popular movement of opposition that could threaten the interests of the ruling elite as a whole.

Though portrayed by the media as a victory for “moderation” and bipartisanship, and hailed by the Democratic leadership as a colossal defeat for the Bush White House, the Senate agreement is actually a rotten compromise that ensures the confirmation of three ultra-right jurists who had been blocked by the Democratic filibuster. The first of the three, Priscilla Owen of Texas, was confirmed Wednesday to a lifetime appointment to the Fifth US Circuit Court of Appeals by a 56-43 vote—a margin that suggests the filibuster against her (it requires 60 votes to end a filibuster) could have been sustained indefinitely.

In return for the confirmation of Owen, Janice Rogers Brown of California (a far-right jurist who has condemned Roosevelt’s New Deal as “America’s socialist revolution”) and William Pryor of Alabama (an anti-gay bigot and anti-abortion extremist), the Senate compromise permits the continued filibuster of two other Bush judicial nominees, William Myers of Idaho and Henry Saad of Michigan. The Senate Democratic leadership had already agreed to drop a filibuster against two other nominees from Michigan.

Democrats used the filibuster to block 10 of 45 Appeals Court nominees during Bush’s first term. Three withdrew from consideration, but Bush renominated the remaining seven, of whom five will now likely be confirmed. The cumulative result—five out of ten—allowed the seven Democrats and seven Republicans to spin the deal as a “split-the-difference” agreement.

On the more fundamental question—the threat by Senate Republican leaders to overturn 200 years of precedent and change Senate rules to ban filibusters of nominations—the agreement by the 14 senators merely postpones the issue until the next Democratic filibuster. This could take place in little more than a month, when Supreme Court Chief Justice William Rehnquist is widely expected to step down, creating the first vacancy on the

high court in more than a decade.

Bush has repeatedly declared that he would choose Supreme Court nominees in the image of Antonin Scalia and Clarence Thomas, the two most extreme right-wingers on the court, both of whom voted with the majority in the 5-4 Supreme Court decision that quashed the vote recount in Florida and placed Bush in the White House in 2000.

While the compromise agreement called on the Bush White House to consult with the Senate before submitting judicial nominations—discussing prospective nominees rather than simply sending in their names to be rubber-stamped—Bush administration spokesmen immediately rejected this appeal. There would be no change in administration procedures on selecting judges, White House spokesman Scott McClellan said.

That means the White House will continue to clear its judicial nominees, not with elected members of Congress who are charged with giving “advice and consent,” but with the Christian right lobby that exercises increasingly unchecked political power in Washington.

The Christian fundamentalist groups have made the nomination of ultra-right jurists to the Supreme Court their top priority. They seek, by packing the high court with right-wing bigots, to impose their religious agenda on the American people. This will include overturning the right to abortion, suppressing gay rights, and effectively abolishing the separation of church and state.

In this political context, the gushing support for the Senate compromise by the Democratic leadership and most liberal Democratic congressmen and senators—as well as civil liberties and civil rights groups—represents a combination of cynical pretense and self-delusion.

Topping the scale in empty demagoguery was Senate Minority Leader Harry Reid, who officially played no role in the bipartisan agreement, but backed the negotiations behind the scenes and welcomed their result in glowing language.

“Checks and balances have been protected,” he said. “The integrity of the Supreme Court has been protected from the undue influence of the vocal, radical right wing... We have sent President George Bush, Vice President Dick Cheney and the radical arm of the Republican base an undeniable message: abuse of power will not be tolerated, will not be tolerated by Democrats or Republicans. And your attempt—I say to the vice president and to the president—to trample the Constitution and grab absolute control is over.”

This statement deserves serious analysis. It is undoubtedly true, as Reid now belatedly admits, that the Bush administration and Bush and Cheney personally are engaged in a systematic attempt to centralize all power in the hands of the executive branch, do away with all constitutional restraints, and impose the political agenda of the most right-wing faction of the corporate elite.

But where have the Democrats been while this power grab has been going on? What have they done about it? Did they sound the alarm or alert the American people to the plans to “trample the Constitution and grab absolute control?” Not a chance. They have capitulated at every step.

The Democratic Party has prostrated itself before the Republican right, from the Supreme Court intervention in 2000 which placed

Bush in the White House (although Al Gore won half a million more votes), to the Bush tax cuts which have bankrupted the federal treasury while pumping trillions into the pockets of the wealthy, to the drive to war in Afghanistan and Iraq, which Reid and the majority of Senate Democrats supported, to the attacks on democratic rights symbolized by the USA Patriot Act, which passed the Senate by a 99-1 vote.

In the 2004 elections, the Democratic Party establishment backed a presidential nominee who agreed with Bush on the central issue of the Iraq war, rejecting any appeal to antiwar sentiment and offering himself as a more effective commander-in-chief in the “war on terror.” Despite the worst job-creation record of any administration since Herbert Hoover, and poll ratings that would normally have doomed an incumbent president to defeat, the Democrats contrived both to lose the presidential election and to lose ground in the House and Senate.

Now, after five years of combining impotent pleading with the administration and outright collaboration—particularly on the Iraq war and military spending—the Democratic leader in the Senate suddenly discovers that Bush, Cheney & Co. are a threat to American democracy. But he claims to have warded off this threat, not by mobilizing the American people to defend their rights, but through an agreement with seven Senate Republicans: i.e., politicians who support the overall thrust of the Bush administration’s policies, but balk, largely for tactical reasons, at the complete suppression of minority rights in the Senate.

Reid’s conclusion was positively bizarre. “The nuclear option is gone for our lifetime,” he said. Without stretching the comparison too far, one is reminded of Neville Chamberlain returning from Munich after his surrender to Hitler, declaring that his diplomacy had guaranteed “peace in our time.”

The administration and the congressional Republican leadership were battered by the public revulsion at their intervention in the Terri Schiavo case, which demonstrated to millions of people the degree to which the Republican Party has become the political instrument of right-wing fundamentalist and outright fascistic forces.

Under these conditions, to temporize with the Bush administration through parliamentary maneuvers means to give the right wing time to regroup and prepare a new political offensive. In this way, the Democratic leadership provides its most valuable service to the ultra right: it perpetuates the illusion, peddled endlessly by the corporate-controlled media, that Bush is a popular president with a powerful political mandate. The reality is far different: tens of millions of working people bitterly oppose this government, but they are blocked by the straitjacket of the official two-party system from finding any outlet for their anger, frustration and class hostility to the corporate elite.



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