

LaRouche: Shut Down Senate If Cheney Goes Nuclear

by Edward Spannaus

If Dick Cheney tries to ram through a Senate rule change to cut off a filibuster, the Democrats should shut down the Senate until the next election, Lyndon LaRouche said on May 20; LaRouche was speaking as the word went out that Cheney and Senate Majority Leader Bill Frist were planning to trigger the so-called “nuclear option” on May 24. This would mean that Cheney is illegally trying to change the rules of the Senate with a simple majority vote, when the Senate rules clearly require 67 votes for such a measure.

“Cheney is out of order if he doesn’t have 67 votes,” LaRouche said. “That’s the end of the procedure. Shut down the Senate at that point.”

LaRouche said that an effort to change the rules, without the 67 votes, would be a coup d’état. “They’ve violated the Constitution, and you cannot continue business in the Senate as long as they’re doing that.” In the extreme case, the issue must be referred to the outcome of the next general election.

Triggering the Nuclear Option

The fuse for the Cheney-Frist nuclear option was lit on May 18, when Frist brought to the floor, two of the most controversial Bush judicial nominations, Priscilla Owen of Texas, and Janice Rogers Brown of California.

As the debate opened, many Senators noted that what distinguishes the Senate from the House of Representatives, is that the Senate protects the rights of the minority, whereas the House is a majoritarian body. That the Framers of the Constitution gave the Senate, and not both houses, the responsibility of “Advice and Consent” on Presidential nominations, indicates that the Framers wanted the minority’s voice to be heard. Throughout the entire history of the Senate, one of the means by which the right of the minority has been protected, has been the right of extended debate, popularly known as the filibuster.

In his opening statement, Senate Democratic Leader Harry Reid declared that “the right to extended debate is never more important than when one party controls Congress and the White House,” adding that, “in these cases, the filibuster serves as a check on power and preserves our limited government.”

“Right now, the only check on President Bush is the Democrats’ ability to voice their concern in this body, the Senate,” Reid continued. “If Republicans roll back our rights in this Chamber, there will be no check on their power. The radical right wing will be free to pursue any agenda they want, and not just in judges. Their power will be unchecked on Supreme Court nominees, the President’s nominees in general, and legislation such as Social Security privatization.”

Sen. Patrick Leahy (Vt.), the ranking Democrat on the Senate Judiciary Committee, put it this way: “The Senate was intended to keep the Executive from acting like a king.” Leahy labelled the moves by the White House and Republican leadership as “an abuse of power to advance a power grab,” and he charged that this is not an isolated incident: “It is part of a sustained effort by this Administration and partisan operatives in Congress, to consolidate power in one branch, the Executive branch, and ignore our Constitutional history of three separate branches acting as checks and balances on each other.”

At a Democratic press conference the same day, Sen. Ken Salazar (Colo.), got it right, when he charged that efforts to assert absolute control over all branches of the Federal government constitute an effort “to transform our democracy . . . into essentially a dictatorship.”

Dictatorial Rule

LaRouche has warned, from the beginning of this Administration, that under conditions of financial crisis, we would

see the Administration moving toward dictatorial, emergency rule. We saw the police-state measures—dragnets and round-ups—that followed 9/11, and the stampeding of a frightened Congress into passage of the Patriot Act.

We have seen the repeated assertions that the President can ignore Congress and U.S. treaty obligations, such as the Geneva Conventions and the Federal Anti-Torture Act, when he is acting in his capacity as Commander-in-Chief in wartime. It is well known, that Dick Cheney and his legal counsel David Addington have been the chief promoters of this doctrine within the Administration.

The issue in the current Senate fight is not the particular appellate court nominees—as undesirable as they might be. Nor is it even the larger issue of the anticipated vacancies on the U.S. Supreme Court, one or more, that will likely emerge at the conclusion of the present term this Summer. The issue is an overall fascist assault on the U.S. Constitution. The fact that the appellate court nominees who are chosen by the Administration in the showdown are all avowed fascists, who are dedicated to the dismantling of the entire New Deal legacy of FDR, is but an indication of the larger issue at stake.

On May 19, Frist announced that he would file a motion to cut off debate—known as a “cloture” motion—on May 20, and that the cloture vote would be set for May 24. Under Senate rules, 60 votes are required to cut off debate. But the presiding officer, who would probably be Vice President Cheney, is expected to “rule,” pushing the Senate Parliamentarian aside, that the 60-vote requirement is “unconstitutional” with respect to judicial nominees. At that point, as many Democrats have pointed out, Cheney has to break the rules to ram through the rule-change, since a rule-change motion is itself subject to filibuster, and requires two-thirds, or 67 votes, to cut it off.

If Cheney tries to bypass the 67-vote rule, the coup is on, and Senate Democrats and honest Republicans must act accordingly.

For background on the “nuclear option,” see EIR, May 6 and May 20, 2005. Contact the author at edspannaus@larouchepub.com.

Documentation

Senate Debate, May 18

Senate Minority Leader Harry Reid (D-Nev.): Mr. President, the right to extended debate is never more important than when one party controls Congress and the White House. In these cases, the filibuster serves as a check on power and preserves our limited government.



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Right now, the only check on President Bush is the Democrats’ ability to voice their concern in this body, the Senate. If Republicans roll back our rights in this Chamber, there will be no check on their power. The radical rightwing will be free to pursue any agenda they want, and not just in judges. Their power will be unchecked on Supreme Court nominees, the President’s nominees in general, and legislation such as Social Security privatization.

Of course, the President would like the power to name anybody he wants to lifetime seats on the Supreme Court and other Federal courts. . . . Basically, that is why the White House has been aggressively lobbying Senate Republicans to change Senate rules in a way that would hand dangerous new powers over to the President over two separate branches—the Congress and the judiciary—and he and his people are lobbying the Senate to break the rules to change the rules.

I am sorry to say this is part of a disturbing pattern of behavior by this White House and the Republicans in Washington, especially the leadership.

From Dick Cheney’s fight to slam the doors of the White House so the American people are kept in the dark about energy policy while the White House has the lights turned on—between the public interests or the corporate interests, it is always the corporate interests—to the President’s refusal to cooperate with the 9/11 Commission, to Senate Republicans’ attempt to destroy the last check in Washington on Republican power, to the House majority’s quest to silence the minority in the House, Republicans have sought to destroy the balance of power in our Government by grabbing power for the Presidency, silencing the minority, and weakening our democracy. . . .

For 200 years, we have had the right to extended debate. It is not some “procedural gimmick.” It is within the vision of the Founding Fathers of this country. They did it; we didn’t



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do it. They established a government so that no one person and no single party could have total control. . . .

Sen. Charles Schumer (D-N.Y.): We are on the precipice of a crisis, a constitutional crisis. The checks and balances which have been at the core of this Republic are about to be evaporated by the nuclear option, the checks and balances which say if you get 51% of the vote, you do not get your way 100% of the time. It is amazing. It is almost a temper tantrum by those on the hard right. They want their way every single time, and they will change the rules, break the rules, misread the Constitution so they will get their way.

That is not becoming of the leadership of the Republican side of the aisle, nor is it becoming of this Republic. That is what we call abuse of power.

There is, unfortunately, a whiff of extremism in the air. In place after place, the groups that were way out of the mainstream with their disproportionate influence on the White House and the Republican leadership in this Senate seem to push people to abuse power. . . .

I make a plea. It is to the seven or eight Republicans on that side of the aisle. Every one of them has told us they know the nuclear option is wrong. It is a plea to have the courage to stand up for what is right. There are many others of our colleagues on the other side of the aisle who have already said they know the nuclear option is wrong, but they say they cannot resist the pressure. . . .

Judges are now under siege. Our Constitution is under attack. Our precious system of checks and balances is under assault. Some of my colleagues seem to have forgotten we in the Senate have a constitutional role to play, and we will. The Founding Fathers did not intend us to march lockstep like lemmings behind every Presidential appointee no matter how many times he or she is put before the Senate. . . .

What about abuse of power? . . . If there ever was some-

thing that signified an abuse of power, a changing of the rules in midstream simply because you could not get your way on every judge, it is this nuclear option. There is now a desperate attempt on the other side of the aisle not to call it the nuclear option, but it was my colleague from Mississippi, the former Majority Leader [Trent Lott], who gave it that name—with justification. You won't change the name. To call it the constitutional option is hypocrisy. There is nothing in the Constitution that talks about filibuster or majority vote when it comes to judges in the Senate.

It is a nuclear option because it will vaporize whatever is left of bipartisanship and comity in the Senate. . . .

Senate Debate, May 19

Senator Reid: Mr. President, I have addressed the Senate on several occasions to do what I believe is setting the record straight about Senate history and the rules of this body. But, frankly, I would much rather address wage and health-care costs, bringing down gas prices, talk about education, spiraling deficits we have. But the Majority Leader has decided we will spend this week and next week, or at least part of next week, talking about judges who I believe, Mr. President, are not in the mainstream of American jurisprudence. . . .

The Senate is not a rubber stamp for the Executive branch. Rather, we are the one institution where the minority has the voice and ability to check the power of the majority. Today, in the face of President Bush's power grab, it is more important than ever. Republicans want one-party rule. The Senate is the last place where the President and Republicans can't have it all. Now the President wants to destroy our checks and balances to assure that he does get it all.

That check on his power is the right to extended debate. Every Senator can stand on behalf of the people who have sent them here and say their piece. . . .

The Senate is a body of moderation. While the House is the voice of a single man, single woman, and the House of Representatives is a voice of the majority, the Senate is the forum of the States. It is the saucer that cools the coffee. It is the world's greatest deliberative body. How will we call this the world's greatest deliberative body after the majority breaks the rules to silence the minority? Breaking the rules to change the rules. This vision of our government—the vision of our Founding Fathers—no longer suits President Bush and the Republicans in the Senate. They don't want consensus or compromise. They don't want advice and consent. They want absolute power.

To get it, the President and Majority Leader will do all they can to silence the minority in the Senate and remove the last check we have in Washington against this abuse of power. The White House is trying to grab

power over two separate branches of government—Congress and the judiciary.

Make no mistake. This is about more than breaking the rules of the Senate or the future of seven radical judges. At the end of day, this is about the rights and freedoms of millions of Americans. The attempt to do away with the filibuster is nothing short of clearing the trees for the confirmation of an unacceptable nominee to the Supreme Court. If the majority gets its way, President Bush and the far, far right will have the sole power to put whoever they want on the Supreme Court—Pat Robertson, Phyllis Schlafly. . . .

Here is what is really at stake: the civil rights of millions of Americans; voting rights of millions of Americans; the right to clean water to drink and safe air to breathe for millions of Americans; the right to free speech and religious beliefs for millions of Americans; the right to equality, opportunity, and justice for millions of Americans; nothing less than the individual rights and liberties of all Americans.

Sen. Tom Harkin (D-Ia.): Since 1790, the filibuster has been used in the Senate countless times, and nearly 100 years ago the Senate passed rule XXII, codifying the right of extended debate. We know what that rule says. It says that it takes 67 votes to change the Senate rules and 60 votes to cut off debate. Those are the rules. They are deeply conservative rules, rules that have been respected and honored for nearly a century, until now. . . .

They are going to employ a trick, a procedure, whereby the rules are overturned by one decision of the Presiding Officer backed by 51 votes. That will destroy the rules of the Senate. Now they say: Well, it only applies to judges now. It can apply to anything else down the pike. . . .

How ironic that this is being done by Senators who call themselves conservative. The truth is that resort to the nuclear option, breaking the rules, making up new rules convenient to the leadership, is a radical, unprecedented action with consequences that no one can predict. Because once the rules are broken and rules are made up as one goes along, seeds of anarchy, of chaos, are sown. . . .

Possibly what we are seeing here is an attempt to seize absolute power and unchecked control of all three branches of government. The Republicans already control the Executive branch. A majority of Supreme Court Justices are Republican nominees. So are the majority of judges on our Courts of Appeal, the circuit courts. Indeed, there is a Republican majority on 10 of the 12 circuits.

Republicans have an iron grip on the House of Representatives. They have a 55-seat majority here in the Senate. Only one barrier now stands in the way of the Republican Party seizing absolute control of every aspect of our government, all three branches, and that is the right of the minority in the Senate to filibuster. . . .

By unleashing the nuclear option, the Republican leadership would crush this last remaining check on its power. . . .

The nuclear option is a flagrant abuse of power. The mi-

nority party, the Democrats, will resist it vigorously within the rules of the Senate. We have a responsibility, an oath of office to defend our constitutional system of checks and balances. We have a responsibility to defend the Senate's unique function as the last bastion of minority rights, as the last check on an abusive, out-of-control majority. . . .

The very nature of the Senate as an institution is at stake. More than that, the very nature of how we operate as a government is at stake. As I said, when you destroy the rules by not following the rules, you invite chaos. Chaos invites tyranny.

Sen. John Kerry (D-Mass.): We are in a remarkable moment of confrontation. This is a great institution, or at least it always has been, and it is looked up to by people all over the world. . . . Those of us who have had the privilege of being here for some period of time—I have been here for 22 years; Senator Byrd has been here almost 50; Senator Kennedy, Senator Stevens, and others have also served for a significant period of time. . . . Never in that whole period of time I have served have I ever seen this institution behaving the way it does today.

Colleagues who came to do the same good as colleagues on the other side of the aisle, locked out of conference committees, hearings that do not take place when they ought to; oversight that does not occur as it used to. This institution is being damaged daily by the partisanship, the bitter ideological divide that is preventing good people on both sides of the aisle from doing good business for the American people; from finding real solutions to the real problems of real concern to average families all across our country, who cannot pay their health-care bills, who are losing jobs abroad, who worry about the twin deficits of the budget of our country and of our trade; who see extraordinary threats to community as kids do not get the education they ought to.

The Senate is now watching this struggle take place, countless hours consumed by an effort to change the rules by breaking the rules. If my colleagues want to change the rules, use the rules to change the rules. Do not subvert the system. Do not play a cute parliamentary game that has been untouched over 200 years.

This is a stunning moment. The problem is that words spoken in this Chamber do not even fully convey the importance of this moment. This is, in fact, one of those times the Founding Fathers and countless other statesmen of history have warned us against.

This is about George Bush and Karl Rove and the Republican leadership and their quest for absolute control over who goes to the Supreme Court and to the judgeships across this country. This is about carrying, beyond this branch of government, power into another branch of government that is supposed to be separate. This is about the gratification of immediate ideological goals and the pursuit of power, regardless of the long-term consequences to the Senate, the Congress, or the Constitution of the country. . . .