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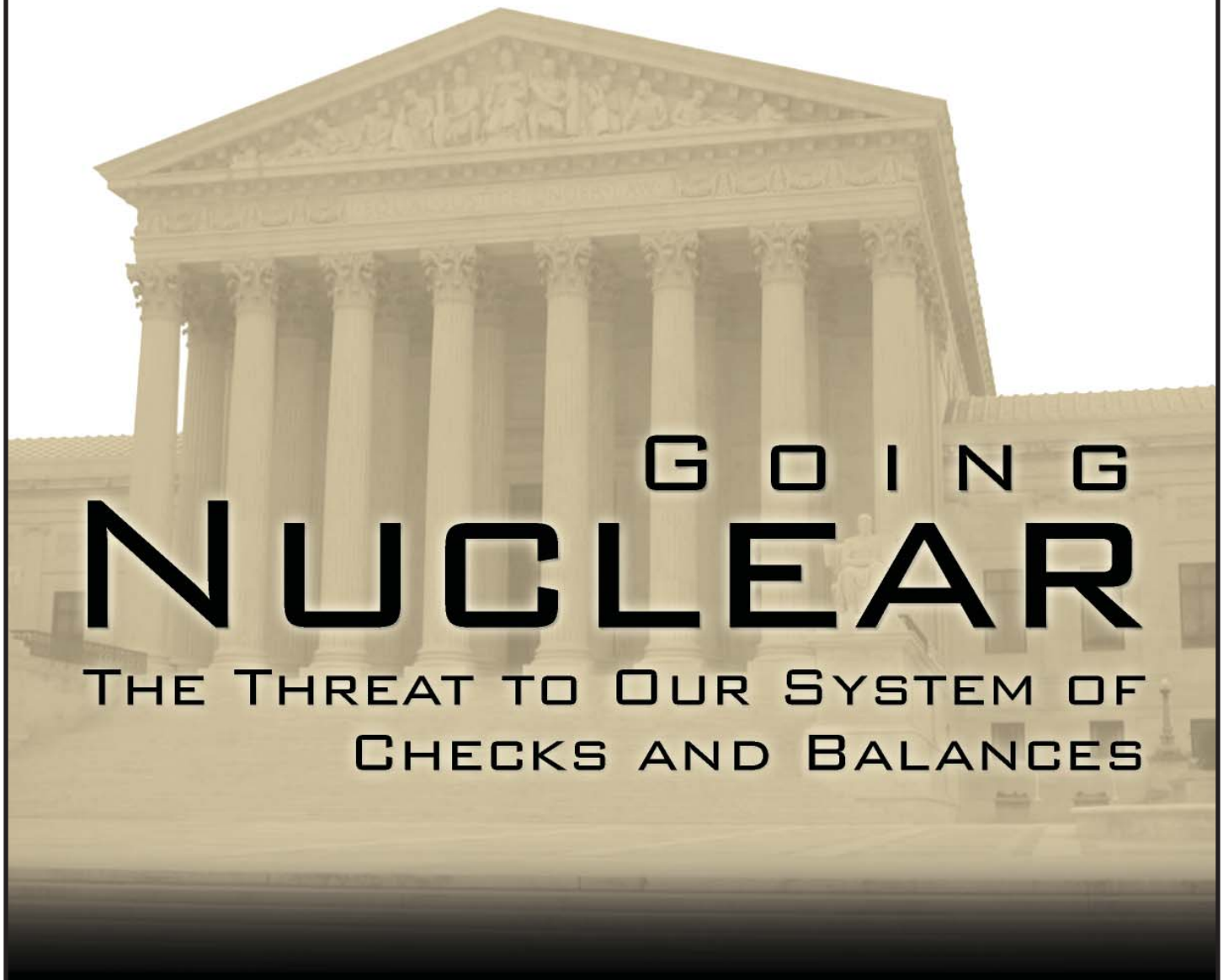

GOING NUCLEAR

THE THREAT TO OUR SYSTEM OF CHECKS AND BALANCES

SENATOR ROBERT C. BYRD

MICHAEL GERHARDT • NORMAN ORNSTEIN

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"GOING NUCLEAR: THE THREAT TO OUR SYSTEM OF CHECKS AND BALANCES"

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JOHN PODESTA:

Good morning. I'm John Podesta, the president of the Center for American Progress. It's my pleasure to welcome you to this forum on the historic role of the judicial filibuster and the so-called nuclear option, by which the Senate majority leader has threatened to eliminate the filibuster. The, quote, "nuclear option," unquote, is no ordinary legislative proposal, and the controversy it has aroused is no ordinary political scrimmage. Thoughtful voices on both the right and the left have raised profound concerns that breaking longstanding senate rules to terminate debate on judicial nominations will cause lasting damage to the Senate and to our constitutional system of checks and balances.

Should this effort succeed, it could permanently impair the ability of the Senate to provide an effective counterweight to presidential power, giving whoever occupies the Oval Office virtually unchecked power to appoint whomever he pleases. As George Will has written, "Exempting judicial nominations from filibusters would enlarge presidential power." He asks, "Are conservatives, who once had a healthy wariness of presidential power, sure they want to further expand that power in domestic affairs?"

Similar dismay was recently voiced by two conservative former senators, Jim McClure and Malcolm Wallop. Writing in the *Wall Street Journal*, they said, "It is disheartening to think that those entrusted with the Senate's history and future would consider damaging it in this manner." As someone who was closely involved in the judicial nomination process during the eight years I served as counsel to the Senate Judiciary Committee and during the last administration, I strongly share those concerns.

My experience dates back to the Carter administration, through the Reagan, Bush, and the Clinton presidencies. During that time, the Senate majority switched from Democrat to Republican, back to Democrat, and back to Republican again. Most judges nominated by those presidents were confirmed, but many were blocked by the Senate, often in circumstances where a majority of the Senate would have voted to confirm the nominee. Yet at no time during those years did the leaders, Democrat or Republican, who controlled the Senate ever seek to break the rules on limiting debate to force their confirmation; not Robert C Byrd, not Howard Baker, not Bob Dole, not George Mitchell, not Tom Daschle, not even Trent Lott.

I'm convinced that Americans want the president and the Congress to work together to ensure that judges who populate the federal bench and who serve with life tenure are highly qualified men and women whose views are within the constitutional mainstream. The filibuster is a means towards that end. Why? Because it encourages presidents to consult with the Senate and to name moderate, mainstream nominees who will judge cases fairly and without bias and who will have no difficulty garnering the votes of 60 senators that they need to be confirmed.

By removing the safeguard offered by the filibuster, the nuclear option would seriously and perhaps irreparably damage an institution that has functioned since its inception under customs and traditions that ensure an atmosphere of careful deliberation and mutual respect. Ultimately, this is not a dispute between the left and the right. It's a matter of right and wrong. It's a choice between safeguarding our system of checks and balances or destabilizing it; between upholding the Senate's coequal role in the confirmation process or diminishing it.

With us to discuss these matters are three of the nation's leading experts on the history and traditions of the Senate and its constitutional role. We begin with our Keynote speaker. West Virginia has provided our nation with two of America's most valuable resources. One is coal, the other is the Honorable Robert C. Byrd. As all of you know, Senator Byrd is a legendary figure in the annals of the Senate and perhaps the greatest living exemplar of Senate history and tradition. Senator Byrd was elected to the Senate in 1958 after serving three terms in the House of Representatives. Over the past 47 years he has held more leadership positions in the U.S. Senate than any other senator of any party in Senate history. In 1977 he was elected Democratic leader and held that position for six consecutive terms. Half of that time as majority leader and half as minority leader. He has twice served as chairman of the Appropriations Committee and has twice been elected president pro tempore of the Senate, a post that placed him third in line in succession to the presidency. He is the author of an acclaimed multivolume history of the Senate. I'm proud to have an autographed copy of that. It is a masterful work and should be required reading for those working in, with, or especially – and I'm speaking to those reporters out here who are covering the Senate.

Senator Byrd, I think it would be acknowledged on both sides of the aisle that there is no other senator in modern history who has done so much to uphold the traditions and prerogatives of the Senate or achieved such a singular renown for both leadership and scholarship. It's truly an honor to have you with us.

Please welcome Senator Robert C. Byrd.

(Sustained applause.)

SENATOR ROBERT BYRD:

Good morning. I thank the Center for American Progress. I thank John Podesta. I thank Mark Agrast. And I thank the panelists whom I've known and with whom I have spoken on many occasions.

"That 150 lawyers should do business together in the U.S. Congress ought not to be expected." Those are the words of Thomas Jefferson. Now comes the so-called nuclear option or constitutional option to prove him right. This poisoned pill, euphemistically designated "the nuclear option," has been around a long time; since 1917 in fact, the year the cloture rule was adopted by the U.S. Senate. It required no genius of Brobdingnagian dimensions to conjure up this witch's brew. All that it takes is, one, to have the chair wired. Two, to have a majority of 51 votes to back up the chair's ruling. And three, a determined ruthlessness to execute the power grab.

Over the 88 years since 1917, however, no White House and no party in control of the Senate has ever, ever resorted to the use of this draconian weapon in order to achieve its goal, until now. Why now? It is because a determined minority in the Senate has refused to confirm 10 of 214 nominees to federal judgeships submitted by President George W. Bush during his first term as president. Since his reelection, President Bush has resubmitted seven of the 10 nominees who failed confirmation in his first term. Hence, a heavy-handed move is about to be made to change the rules by disregarding the standing rules of the Senate that have governed freedom of speech and debate in the Senate for over 200 years.

The filibuster must go, they say. In my 53 years in Congress I have never seen a matter that came before the Congress, before the Senate, or the House as a matter of fact, that is so dangerous, so out of the mainstream, so radical as this one. Obstructive tactics in a legislative forum, although not always known as filibusters, are of ancient origin. Plutarch reported that while Caesar was on sojourn in Spain, the election of consuls was approaching. He applied to the senate for permission to stand candidate, but Cato strongly opposed his request and attempted to prevent his success by gaining time with which view he spun out the debate until it was too late to conclude upon anything that day. Hey! The filibuster has only been around 2,064 years, since circa 59 BC.

Filibusters were also a problem in the British parliament. In 19th-century England, even the members of the cabinet accepted the tactics of obstruction as an appropriate weapon to defeat House of Commons initiatives that were not acceptable to the government. In this country, experience with protracted debate began early. In the first session of the first Congress, for example, there was a lengthy discussion regarding the permanent site for the location of the capital. Fisher Ames, a member of the House of Representatives from Massachusetts, complained that the minority makes every exertion to delay the business. Senator William Maclay of Pennsylvania complained that every endeavor was used to waste time. Long speeches and other obstructionist tactics were more characteristic of the House than of the Senate in the early years.

There have been successful filibusters that have benefited the country. For example, in March, 1911, Senator Owen of Oklahoma filibustered a measure granting statehood to New Mexico arguing that Arizona should also be a state. President Taft opposed the inclusion of Arizona statehood because a provision of Arizona's state constitution permitted the recall of judges. Arizona later attained statehood at least in part because senators took time to make the case the year before.

Another example occurred in July, 1937 when a senate filibuster blocked FDR's Supreme Court-packing plan until public opinion turned against the plan. Freedom of speech and debate is enshrined in Article I Section 6 of the U.S. Constitution. The roots run deep. Before the British parliament would proclaim William III and Mary as king and queen of England, they were required to swear allegiance to the British Declaration of Rights, which they did on February 13, 1689. They were then declared joint sovereigns by the House of Commons. The declaration was converted into the English Bill of Rights by statute on December 16, 1689; the ninth article of which guarantees freedom of speech and debate in parliament in words similar to those in our own Constitution Article I, Section 6.

So now, for the first time in the 217 years since 1789, the tradition of freedom of speech and debate in the Senate is under a serious – a serious threat of extinction by the majority party through resort to the nuclear option. Marty Gold, deservedly respected for his knowledge of the Senate's rules and precedent and opponents of free speech and debate, who really are Johnnies-come-lately, claim that during my tenure as majority leader in the United States Senate, I established precedents that now justify a proposal for a misguided attempt to end debate on a judicial nomination by a simple majority vote rather than by three-fifths vote of all senators duly chosen and sworn as required by paragraph 2 of Senate Rule 22. Their claims are false – utterly false.

Proponents of the so-called nuclear option cite several instances in which they inaccurately allege that I blazed a procedural path toward an inappropriate change in senate rules. They're dead wrong – dead wrong. They draw analogies where none exist and create cockeyed comparisons that fail to withstand even the slightest intellectual scrutiny. My detailed response to Marty Gold's claims and allegations appear in the March 20, 2005, edition of the Congressional Record. But simply put, no action of mine ever denied a minority of the Senate a right to full debate on the final disposition of a measure or matter pending before the Senate. Not in 1977, not in 1979, not in 1980, not in 1987; the dates cited by critics as grounds for the nuclear option. In none – in none of these instances cited by those who threaten to invoke the nuclear option did my participation in any action ever deny the minority in the Senate, regardless of party, it's right to debate the real matter at hand.

Now, why can't reasonable senators on both sides of the aisle act in the best interest of the Senate, in the best interest of the Constitution, and the best interest of the country by working together to find a way to avoid this procedural Armageddon?

President Gerald Ford always said that he believed in friendly compromise and called compromise the oil that makes government go. When I was a mere lad in southern West Virginia a long time ago, I once accidentally threw a wooden airplane crafted by myself through the glass of a window in a neighbor's house. The neighbors name was Mr. Arch Smith. He was angry and I was scared. Into the house I went to plead with Mr. Smith not to tell my dad. I knew that a belt-thrashing awaited me if he did. I promised to pay Mr. Smith the 35 cents for the windowpane if he would stay mum about the accident. He promised he would do so. I told him I would raise the 35 cents by running errands for our friendly neighbor next door. We struck a deal. We compromised and my dad never learned of the incident until after I'd paid my debt.

That compromise saved me a licking and paid for Mr. Smith's broken windowpane, so the sweet art of compromise solved our dispute. Of course, the Senate itself is the result of a compromise which solved a dispute. The Senate answered the plea of the smaller states like West Virginia, which now is West Virginia, for equality and a forum where they could have equal representation and minority views could be heard. Because of that famous action, a Great Compromise of July 16, 1787, the Senate and the House balanced each other, reflecting majority rule and minority rights like halves of the same apple in our republic and achieving a delicate balance; a finely tuned, exquisitely honed accommodation of tensions which has endured for over 200 years.

To paraphrase the words of James Madison, "The republic has been structured to guard against the cabals of a few as well as against confusion of a multitude," but how each House of Congress would maintain that balance was left to the discretion of the two bodies. Article I, Section 5 of the Constitution reads, "Each House of the Congress may determine the rules of its proceedings." Clearly the Senate and the House are empowered by those words in our national charter to set the rules which govern their procedures and enable each body to best perform its constitutional functions. This of course includes senate rules governing debate and the procedures for changing its rules. And let's not forget the precedents: Disraeli said, "A precedent embalms a principle, a principle that has been acted upon and recognized by those who preceded us."

The Constitution under Article II, Section 2 also requires a president to submit his selection of federal judges, members of his own cabinet, and certain other high-ranking officials to the Senate for its advice and consent. The framers allowed the executive branch only to propose. It was left to the Senate to dispose. There is no stipulation in the Constitution as to how the Senate is to express its advice or give its consent. President Bush incorrectly – incorrectly maintains that each nominee for a federal judgeship is entitled to an up or down vote. The Constitution does not say that. I say the Constitution itself does not say that each nominee is entitled to an up or down vote. The Constitution doesn't say that, it doesn't even say that there has to be a vote with respect to the giving of its consent. The Senate can refuse to confirm a nominee simply by saying nothing and doing nothing. In Section 2, Article II it says, "And by and with the advice and consent of the Senate he shall appoint ambassadors, judges of the Supreme Court and all other officers of the United States."

Just as in Article I, concerning the setting of Senate rules, Article II allows the Senate the freedom to determine how it will use its advice and consent powers. The choice of the Senate as the single entity to work with the president on the selection of life-tenured federal judges seems to strongly indicate the framers' desire for scrutiny by the house of Congress uniquely designed for the protection of minority views. The framers could have selected the majoritarian House of Representatives for such a duty; they did not. In fact, they totally excluded the House. They made a conscious decision to delegate the advice and consent function to the United States Senate.

But suppose the president's party controls the Senate and therefore controls the votes of the majority in the Senate? Where then is the check on the president on his power? The filibuster is the minority's strongest tool in providing the constitutional curb on raw presidential power when it comes to nominations and the federal courts. Of course the president's party could occupy sixty seats in the Senate and that would be enough to break any filibuster except when amending the rules. But sixty votes is a high threshold and does provide an effective check on the abuse of power. Why – why would we ever want to eliminate this important check on presidential power? Haven't we always had a healthy suspicion of too much power in the hands of a king or any president, regardless of party affiliation? The filibuster is the final bulwark preventing a president from stacking the courts as FDR tried to do in 1937.

If his political party holds a majority in the Senate without the ability by a minority to defeat cloture by a supermajority, that slim wall holding back the waters of destruction of a fair and independent judiciary ruptures. Other liberties enumerated in the Bill of Rights can then also be washed away by a president who stacks the Court to reflect a political agenda. Freedom of speech, freedom of religion, all could be gone, wiped out by a partisan court beholden to one man: the president of the United States.

Eliminating the filibuster would silence the people's voices in the Senate. It would start by shutting off debate about judges, but likely would not end there. The nuclear option could stop a senator from speaking on an issue important to the people of his or her state, important to sportsmen, important to farmers, important to senior citizens. It could shut out – shut off dissent when a majority wants to force through a measure that would significantly harm a state's economy. Once the nuclear option is launched, there's no stopping it and at the bottom of the rubble freedom of speech will lie dead, dead, dead.

The threat of the so-called nuclear option puts us on a dangerous course. Yet incredibly today we stand right on the brink, maybe only days away from destroying the checks and balances of our constitution. What has happened to the quality of leadership in this country that would allow us to even consider provoking a constitutional crisis of such major proportions? Where is the gentle art of compromise?

Edmund Burke said, "All government, indeed every human benefit and enjoyment, every virtue and every prudent act is founded on compromise and barter." As I have said earlier, the nuclear option has been around for years. It could have been employed at any time, yet no leader of either party chose to go down that path because the consequences are so dire. Why then have we arrived at such a dangerous impasse? Reaction to recent decisions handed down by federal courts has fueled the drive toward this act of self-destruction.

Many citizens, religious people, born-again citizens angered by a feeling of years of exclusion from our political process are deeply frustrated. I am in sympathy with such feelings. I do not agree with many of the decisions which have come from the courts, the Supreme Court included, concerning prayer in school and prohibitions on the public display of religious items. For example, relating to freedom of religion, Article I states, "Congress shall make no law respecting establishment of religion or prohibiting the free exercise thereof." In my opinion, the courts have not given equal weight to both of these clauses, but have stressed the first clause while not giving enough weight to the second clause: quote, "or prohibiting the free exercise thereof."

I've always believed that this country was founded by men and women of strong faith and that their intent was not to suppress religion in the life of our nation, but to ensure that the government favored no one religion over another. I understand the extreme anger of many good people who decry the nature of our popular culture with it's overemphasis on sex, violence, profanity, and materialism. They have every right to seek some sort of remedy. But these frustrations, as great as they are, must not be allowed to destroy crucial institutional mechanisms which protect minority rights and curb the power of an over-reaching president. And yet, that is exactly what is about to happen with this very misdirected attack on the filibuster.

The outlook for compromise is dim. The debate has reached a fever pitch and political polarization is at levels I have never seen in my 53 years in Congress and my 47 in the United States Senate. Democrats have overreached at times, Republicans have overreacted, and the White House – the White House has poured salt in the wound by sending the same contentious nomination right back to the Senate as if there were not a county full of qualified and talented judges from which to choose. Our two great political parties are not having a national debate. We're simply shouting at each other.

I've heard statements of late which cause me to shudder. Such things as Democrats hate America. What garbage. Or Democrats hate people of faith. Oh, how false. Or Republicans want to eliminate separation of church and state. Thinking Americans would ordinarily shun such extreme and ridiculous rhetoric and yet vituperation and extremism continue to rage on all sides. There have even been overt attempts to physically threaten and intimidate federal judges. When the nation becomes this divided, when the spin becomes this mean, the destruction of basic principles which have been our guide for more than two centuries looms straight ahead.

Moreover, the trashing and trampling of comity leaves ugly scars that are sure to fester and linger. How can we recover from the venom spewed by this dangerous political ploy and get on with the people's business, especially if the nuclear trigger is actually pulled? At such times as these, the character of the leaders of this country is sorely tested. Our best leaders search for ways to avert such crises, not ways to accelerate the plunge toward the brink. Overheated partisan rhetoric is always available, although these days it seems to come especially cheap, but the great majority of our people want a healthy two-party system and leaders who know how to work together despite serious differences.

The current uproar serves only to underscore the mounting number of problems not being addressed by this government. Over 45 million persons in our country, some 15 percent of our population cannot afford healthcare insurance. Our infant mortality rate is the second highest of the major industrialized countries of the world. Our deficits are skyrocketing. Poverty in these United States is rising with 34 million people, or 12.4 percent of the population living below the poverty line. Our veterans lack adequate medical care after they have risked life and limb for all of us. Our education system produces eighth-graders ranked 19th out of 38 countries in the world in math and 12th-graders ranked 19th out of 21 countries in both math and science. And yet we debate and seek solutions to none of critical problems and instead focus all energy, all attention on the frenzy over the selection of judges and seek as an antidote to our frustration the preposterous – the preposterous solution of permanently crippling freedom of speech and debate and the right of a minority to dissent in the United States Senate. What a shame.

It is very important to remember that the Senate has formalized ways of considering changes to our rules. Changes require 67 votes to curtail a filibuster of rules changes. If this nuclear option is employed in the way most frequently discussed; in other words, a ruling from the chair that a supermajority requirement for cloture on a filibuster in respect to amending the rules is unconstitutional, if sustained by 51 votes cloture then would require only a simple majority vote with respect to federal judgeships. There's nothing then except good sense, which seems to be in very short supply, to prevent majority cloture of any filibuster on any measure, on any matter, whether on the legislative or the executive calendar. Think of that. Think of that. Rules going back two hundred years and beyond with roots in the early British parliament can be swept away by a simple majority vote because of demagoguery, lack of leadership, raw ambition, hysteria, and a state of brutal political warfare that wants no truths and brooks no peacemakers. We may destroy the U.S. Senate leaving in our wake a president able to select and intimidate the courts of the land like a king and a system of government finally and irretrievably lost in a last pathetic footnote to Ben Franklin's rejoinder for the ages, "A republic, madam, if you can keep it." This is scary – scary.

I suspect that at least part of what all of this dangerous sound and fury is about can be explained by the advanced ages of several Supreme Court justices and rumors of the Chief Justice's coming retirement due to ill health. The White House does not want a filibuster in the Senate to derail a future choice for the Supreme Court. Let me dare to step into the brink and propose something that might calm some waters. In the 105th Congress, Senator Arlen Specter, a very honorable Republican senator, and I introduced Senate Resolution 146, a bill which would establish an advisory role for the Senate in the selection of Supreme Court justices.

Except for a very limited floating of names shortly before the president sends up a nomination for the Supreme Court, no one gets to weigh in on the choices until after they are made. As in so many instances in Washington, broad consultation is nonexistent. In the case of potential occupants for the federal bench, that is a recipe for instant polarization before hearings on nominees are even held. After that, everyone quickly takes sides and the steam mounts like in an overheated pressure cooker until the lid is about to blow off.

Well, therein lies the source of some of the fighting over the makeup of the courts: no prior consultation. So in effect no advice independent of the White House. Senator Specter's bill and mine aims to release some of that steam in this way. The Senate Judiciary Committee would establish a pool of possible Supreme Court nominees for the president to consider. Based on suggestions from federal and state judges, distinguished lawyers, law professors, and others with a similar level of insight into the suitability of individuals for appointment to the Supreme Court, such a pool would fulfill the Senate advice function under Article II, Section 2. In other words, everyone could get their oar into the prospective judicial waters. The president would, of course, be free to ignore the pool if he chose to do so. But the advice required by the constitution would be formally available and the president would know that the individuals in the pool would have received a bipartisan nod from the Senate committee required to do the vetting.

Such a pool might even be expanded to include all nominees for our federal judiciary. Perhaps letting the Senate in on the judicial take-off as well as on the landing can help in the future to heal some of the anger that dominates the discussion of the federal courts these days. But for now, like many of you, I simply hope and I pray – I pray – I pray fervently that cooler heads will prevail and compromise, that fading art, will prevent us from heading over the cliff. There are at least some efforts in that direction, but time is very short. In just a few days we may see the unbelievable come to pass: one man, the president of the United States, able to select the third unelected branch of government including the Supreme Court, the court of last resort; the Senate of the United States relegated to a second House of Representatives with six year terms; free speech and unfettered debate rejected and the constitutional checks and balances in sad and sorry tatters. Shame. What a shame.

In closing, let us remember the words spoken by Vice President Aaron Burr in 1805 when he addressed the Senate for the last time, "This house is a sanctuary; a citadel of law, of order, and of liberty; and it is here – it is here in this exalted refuge; here, if anywhere, will resistance be made to the storms of political frenzy and the silent arts of corruption; and if the Constitution be destined ever to be destroyed, ever to be perished by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor."

Ladies and gentleman, the clock is running and the hour of fulfillment of Vice President Burr's prophecy is virtually at hand.

(Applause.)

MR. PODESTA: I want to thank the senator for that wonderful speech and history lesson, but I also want to thank him for his unwavering commitment to the Senate as an institution and to the U.S. Constitution. Thank you, Senator.

The senator has other commitments and must return to Capitol Hill, so let me ask you all to extend one more hand for the senator for his work on this important issue and –

(Sustained applause.)

MR. PODESTA:

Really quite a lesson. As the senator was talking, I couldn't help but thinking that perhaps James Dobson gives new meaning to Madison's concern about a cabal of the few. It's now my pleasure to introduce our other panelists and our distinguished panelists. I'm going to provide brief introductions; their full biographies are included in your materials.

Professor Michael Gerhardt is the Hanson Professor of Law at William and Mary School of Law. He previously served as dean at Case Western Reserve University School of Law and is a member of the faculty at Wake Forest School of Law. He's practiced in Atlanta and Washington, DC, and was special consultant to the White House Counsel's Office for the confirmation of Justice Stephen Breyer and the National Commission on Judicial Discipline and Removal. He's a nationally recognized authority on constitutional law and the author of books on the federal appointments process and the federal impeachment process. In the summer of 2003, Professor Gerhardt testified before both the Senate Rules and Judiciary Committee on the constitutionality of the filibuster.

Norm Ornstein is a scholar at the American Enterprise Institute for Public Policy Research. He's probably one of the best known Washington observers of Congress. He serves as an election analyst for CBS News. He's a regular contributor to *USA Today* and writes a weekly column called "Congress Inside Out" for *Roll Call*. Dr. Ornstein serves as senior counselor to the Continuity of Government Commission, which works to insure that our institutions of government can be maintained in the event of a terrorist attack. He played a major role in shaping the McCain-Feingold campaign finance law and co-directs the Transition to Governing Project. His many books include, *The Permanent Campaign and Its Future; Intensive Care: How Congress Shapes Health Policy,* both with Thomas Mann and *Debt and Taxes: How America Got Into the Budget Mess and What We Can Do About It* with John Makin.

We have asked each panelist for opening remarks for about 10 minutes and then I'm going to open things up to the audience for questions. With that, let me turn it over to Professor Gerhardt.

MICHAEL GERHARDT: If I were smart, I would not have agreed to go after Senator Robert Byrd, but no one has accused me of being smart. My only, I guess, justification for that on the grounds which I could possibly be able to claim such a privilege is I am going to be talking about the United States Constitution.

In particular, what I want to do just very briefly is set out what I think are the very clear textual foundations for the filibuster and, in particular, Rule 22 which is one of the targets, of course, of the nuclear option. And then expose I think some of the problems with the myths about filibuster than have been sort of claimed by proponents of the nuclear option and then of course turn it over to Norm.

I think one thing that gets lost in all of the crying and yelling and screaming about the filibuster is the very, very clear textural foundations for it. There really is, I think, almost no doubt about it. It's very straightforward. Article I, Section 5 of the Constitution provides each chamber of Congress the power to develop or determine rules for its proceedings. That's what the Constitution says. There's no limitation, no condition, there's no exception. It is what we describe as a plenary or complete grant of authority to each chamber to develop rules for its proceedings, and each chamber has done that over the course of 200 years. It is not unusual for the Senate to have adopted a rule such as the one that protects and provides for the filibuster.

That rule is oftentimes described as one in nature as countermajoritarian, and what that means is it frustrates the will of the majority. There are all sorts of rules like that in the United States Senate. They range from unanimous consent requirements to the rules that provide for delegations of authority to committees to consider various legislative matters and of course there are other practices such as the blue slip process, senatorial courtesy, all of which involve actions by some minority that will at some point and in some way thwart the will of the majority. So in that sense there's nothing unusual about the filibuster.

Moreover, if we look at the way the Constitution is framed, it's easy to find structural support for the filibuster. For example, let's go back to the portion of the Constitution that provides the president with the authority to make appointments. In the preceding few words of the Constitution, the relevant article provides that the president shall essentially present to the Senate treaties and that the Senate then shall consider and with its advice and consent power ratify treaties. The exact same language is used with respect to treaties and nominations.

Nobody is claiming that treaties require an up or down vote every time that they have been proposed, and, in fact, as an historical matter they haven't been subjected to that kind of process. Nobody is claiming that every bill requires an up or down vote of the Senate and of course not every bill is exposed to or subject to an up or down vote. The point is that if you look at the structure of the constitution, the Senate has taken its advice and consent power and then pursuant to that power and its rule-making authority made procedures for how it will go about giving its advice and consent. And thus we have a process that requires advice and consent for approval, but does not require advice and consent (of?) the full process if the Senate chooses not to give its advice and consent. And that structure has been generally honored and followed throughout American history, which brings me to historical practices: a third very clear ground of support for the filibuster.

I just want to mention four sets of relevant data here before I talk about the myths of the filibuster. The first has to do with whether or not there have been any prior judicial filibusters. In other words, prior to the recent filibusters of some of President Bush's Circuit Court nominations, have there ever been any prior judicial filibusters? The answer is plainly yes. For example, in 1881 the Senate filibustered the nomination of Stanley Matthews to the United States Supreme Court. We also know in 1968 the Senate filibustered. There was a filibuster against the nomination of Abe Fortes and Homer Thornberry to the United States Supreme Court. In at least one Congressional Research Service report we know that, for instance, from 1949 to 2002, there were 17 judicial filibusters and there have been others throughout American history. So that's one set of pertinent data.

The second piece of relevant data has to do with whether or not there has been a delay of some other similar techniques used to block floor votes on Supreme Court nominations. In the 19th Century, 14 Supreme Court nominations did not reach the floor. The Senate never voted on them. We also know throughout the 20th Century various nominations fail to make it out of committee and failed ever to get to the floor of the United States Senate. In fact, so much so that George Haynes in his history of the Senate refers to the tradition – and he wrote the book in the 1930's – he refers to the tradition of nominations not making it out of committee and not making it to the floor in the last year of a president's term because they would then be thought – it was thought it would be more appropriate to hold those over.

If that's not enough, Rule 31 of the rules provides that if the Senate has not acted upon a nomination by the end of the session during which it was made it lapses and the president is required to renominate people. The rule itself presumes that some nominations will not be acted upon. And then I would also just mention – it may be another aspect of the structure – the Constitution doesn't set any deadline by which the Senate needs to act on advice and consent. It can take days, it could take weeks, it might even take years to figure out whether or not it's appropriate to give advice and consent with respect to a particular nomination. And that is perfectly consistent with the structure of the Constitution and its historical practices.

Another set of relevant data, at least I think, is the fact that nominations to executive offices have been filibustered numerous times throughout American history. Just, for instance, during the administration of President Clinton, there were two nominations to executive offices blocked by filibusters. The reason I find that pertinent is because I think when you read the Constitution, you figure out that there's only one appointments clause. The clause provides that all nominations basically are subject to the same process. All nominations of officers of the United States are subject to the same process: they're made by the president subject to the advice and consent of the Senate. So what would be true for executive nominations ought to be also true for judicial nominations insofar as the procedures are concerned.

Then there's a last bit of historical data that I think is truly important and that is the unbroken trend – the unbroken trend of the United States Senate to amend its rules in accordance with its rules. You look at the long history of the Senate and there's never been a time when a rule was broken or amended. Instead – or amended without following the rules. That trend, of course, is what's at stake here.

That brings me to the myths about the filibuster and there are so many that in fact I don't have time to get into them. I'll just mention a few. The first is that over the past 200 years there's been a tradition in the United States Senate of giving up or down votes on every judicial nomination. That's just simply not true. That's only true, in fact, if you ignore history. If you look at the history of the United States, and particularly the United States Senate, you find that every president has had judicial nominations that have not had up or down votes. I just mentioned 14 Supreme Court nominations in the 19th Century that didn't have up or down votes. And it wouldn't make sense for that to be the tradition given the structure of the Senate. After all, the Judiciary Committee has a rule, for instance – used to have a rule that provided that if the committee vote were split that that nomination wouldn't then go to the floor of the Senate. Of course, if there's a negative vote in the committee, it doesn't go to the floor of the Senate and numerous nominations fail to get to the floor because they fail in committee. That doesn't count the number of judicial nominations that fail because committee hearings were never scheduled, or committee votes were never held. And we can go into a long list of those.

My point is not to suggest that tit-for-tat is appropriate; my point is to suggest that what is constitutional for the one is constitutional for the other. If it's constitutional for that inaction to have occurred with respect to some judicial nominations, it is equally constitutional for it to occur with respect to others, as is the case with the judicial filibuster.

The second myth is that there have been no prior judicial filibusters. Again, that's true if you ignore history. I don't need to recount them all, but Norm has written a wonderful piece in the *Roll Call* suggesting, for instance, in 1968 what everybody then thought was a filibuster against Abe Fortes's nomination as Chief Justice was, in fact, a filibuster of his nomination as Chief Justice. It is of concern to me as a scholar and a student of history that we have to distort history or ignore it in the course of a very important event. It seems to me the least we can ask is for intellectual honesty on both sides.

A third myth has to do with the fact that there may be precedents for the nuclear option. Well this too is false and on this all I need to do is go to the piece Marty Gold and his coauthor wrote on what they refer to as the constitutional option, otherwise known as the nuclear option. And I quote from it; they say the Senate has always amended its rules in accordance with its rules, so it seems to speak for itself. They say if the nuclear option was ever used or implemented it would be a new precedent. It can't be a new precedent if there's precedent for it. It is, in other words, unprecedented. Just make that abundantly clear. In case I didn't make that clear, it's unprecedented.

Then lastly, just to buttress the point about the absence of precedent, I want to point out in fact there's precedent against the nuclear option. One of the tricks in understanding the Congressional Record and I am sure Norm knows this much better than I do, is that of course it's hard to decipher it and in many instances it's hard to figure out whether or not there was a filibuster ever used to block something. The record isn't so friendly as to tell us exactly what might explain the absence of something or why a delay occurred. But we know, for instance, that on at least four occasions the Senate has rejected items identical to the nuclear option: in 1957, 1961, 1967, and 1975. In further research I'll just mention two other instances I've found. One is in 1925. Vice President Dawes takes office; the first thing he wants to do is essentially start amending the Senate rules because he thinks the Senate rules are antiquated and the Senate needs reform. He proposes something like the nuclear option at that time that would empower a majority essentially to change the rules in any way they saw fit. The Senate overwhelmingly rejects that; in fact, they just refused to act on it.

Then, if you go back further to 1881, you find a couple of interesting events and I just want to mention them close to my closing. Right after James Garfield took office, Republicans in the administration at the time tried to appoint a number of people to federal offices in an effort to essentially redirect how patronage was handled at the time. All of them were filibustered. All those nominations were filibustered. It took seven weeks. At the end of seven weeks those nominations were withdrawn, but that wasn't the end of it. Then what happened is, because people were upset about the filibusters and the blockage that occurred, there was a proposal made to amend the Senate rules. That too was filibustered for another seven weeks and that was stopped. So that's part of our history; we can't ignore that part of our history in the course of trying to make sense out of all this.

Which of course brings me to my last point and that is, I think, again a reminder of the importance of the Senate's following the rules in the course of amending its rules. One of the things that is quite striking to me in watching this and listening to it and sometimes, I guess, even participating with respect to some of it is that there are suggestions made for breaking the rules because of some – I suppose for some compelling reason. The most recent we've heard, I suppose, and I don't really mean any disrespect for this, if I'm understanding what proponents of nuclear option are now saying is because of abuse on the other side, then it's okay to break the rules. Now, I would think – now let's assume for a minute there has been. I'm not saying there has been abuse on the other side. But as I would tell my children, that seems like saying two wrongs make a right. That doesn't seem to make sense to me.

And beyond that, we're told we need to break these rules because the Democrats are blocking people of faith. In the midst of Passover I wouldn't want to bring any religion into this, but it seems to me that whatever happens with respect to the rules, we ought to find a credible argument based on constitutional law for dealing with the rules and dealing appropriately with them and dealing with intellectual honesty. Recourse to justifications outside the rules seems to me to have no place here. What's appropriate is to think about the fact that on all the occasions I've just mentioned to you, the rules have always been honored; they been amended in accordance with the rules; and then, up until now, bipartisan coalitions in the Senate have put the Senate's interest ahead of whatever the issue of immediate concern to a majority may have been and that's of course what this is all about.

(Applause.)

MR. PODESTA: Norm Ornstein.

NORMAN ORNSTEIN: Thanks, John, and thanks, Michael. It's always a pleasure and privilege to be on the same panel with you and that's particularly true for all of us to be on the same panel with Senator Byrd, who is truly a national treasure. And for any of us who care about institutions of governance, he's been a role model for a very long time. You should all read that three-volume set of the history of the Senate that Senator Byrd has done, which really shows the reverence that he holds for institutions. He is not a Johnny-come-lately to these things and I hope we're not either.

What Michael has just said about precedence really has struck me over the last month especially as I have seen a lot of Republican senators and some of their acolytes all speaking from the same talking points and using the same words, and when you really get down to it the theme is: who are you going to believe, me or your own eyes? There is so much misinformation and an expectation that if you keep repeating it that it will thus be so, and I think within that an expectation that when the worm turns, when there's a different time, they'll just say exactly the opposite of what they've been saying now and say it over and over again and make that true.

I find this whole exercise dismaying. It's dismaying in its precedent, dismaying in its scope, and dismaying in its consequences. It's dismaying as well because if this is triggered, and it could happen in the next few days, it will be done without any serious effort to try to avoid it by working out a kind of compromise. And there's absolutely doubt in my mind that if President Bush had called Senator Reed to the White House soon after the 2004 election and said, "I won. We've got 10 nominations that are in question here, seven sent up before, give me six of the 10," to create a kind of balance between the two branches and between those feeling very strongly in the minority, it could have been done in a nanosecond.

But more than that, the fact is if you look at how filibusters have been conducted in the past, and how they were conducted when they occurred right up to the 1960s, they really did fit the form and fashion that most of us became familiar with in *Mr. Smith Goes To Washington*. The Senate came to a grinding halt. It would go 'round the clock; cots brought in, and the public, because it was an issue of great national moment, would stop and focus. And if there was a strong enough public reaction against the minority, at some point the filibuster was broken and the majority would prevail. But if there wasn't that strong public reaction, then the will of the majority in this case wouldn't last and they'd move on to other business. Not once – not once with these nominations in question has Senator Frist, or the majority in this case, turned to the traditional filibuster to raise this to a level of national consciousness to say, "Give the president his nominees;" to bring it to that kind of test.

The Senate since the 1960s as an institution, and frankly this covers both parties, has become pampered and coddled. They do not want to disrupt their daily lives by going through that kind of exercise of going 'round the clock, sleeping on cots, and basically giving up the rest of their creature comforts. And so instead they're going to take a more extreme step without ever going through the steps necessary.

Whenever we think about going to war and, of course, the nuclear option being that warlike terminology that we're using now, we would be aghast if we didn't go through every exercise beforehand to try and exhaust the alternatives short of doing that. We're not doing it in this case. They used a sham filibuster last year going 30 hours where they weren't debating any simple nomination, they just thought they could take a day and a quarter to dramatize what they were doing, but they have not done what is necessary in this case to go through their options.

Now, let me emphasize that this is a radical step if it is taken. This will require, as Michael said, breaking the rules, steamrolling the parliamentarian. And I must tell you, I've been very disappointed in the reporting of this issue, which tends to use a kind of gloss and shorthand over the matters, making it appear as if this is something that at any time can be done by a majority, they just haven't elected to do it before. That is not the case. It is very clear in Senate rules that if you challenge a rule on constitutional grounds, that challenge is debatable and the debate itself can be filibustered. What they're going to have to do in this case, if and when Senator Frist calls for a point of order suggesting that a judicial filibuster is unconstitutional, is ignore they're parliamentarian who will say it can be debated, or steamroll over the parliamentarian and basically break their own rules by not allowing debate in this case. That is something that has never been done before and it is the reason why the quote that Michael used from the article by Gold and Gupta said that this would be unprecedented.

And it is also very clear if you listen to how Senator Byrd did the same kind of thing. What Senator Byrd did as Majority Leader was, in several instances, after a majority and a supermajority had spoken to invoke cloture and had done so repeatedly, not to challenge the whole notion of a filibuster, but to challenge tactics – loopholes that were being used to extend a filibuster well past the point that 60-plus senators had said enough is enough. But he never took that challenge to a step of actually breaking the Senate rules along the way.

Now, let me just underscore a couple of things that Michael Gerhardt said as well. The logic that is being employed by those who are talking about doing this is obviously flawed on its face in certainly at least one major instinct, and that is that if – this would be the only time in history that we have had filibusters where a majority supported the nominees. Ask yourself, if you have a majority that can block a nominee, why would you filibuster? You don't need to filibuster if you've got a majority. So every time we've have a filibuster employed in the past, it's because they didn't have the votes to be able to block otherwise. That was manifestly the case in 1968.

And I got some amusement out the little give-and-take I had with Senator Hatch who wrote a rejoinder to an article that I had done in *Roll Call* saying that there was no filibuster on the Abe Fortes nomination and, of course, if you go back and read any of the newspaper accounts at the time, or what the senator's themselves were saying, it was very clear they were filibustering and it's clear they were filibustering to try and run out the clock so that Johnson would leave office and maybe they would be able to take over the presidency. And it seems clear from contemporaneous accounts at the time, including those of Mike Manatos, who was the Lead Legislative Counsel for the White House, that they had, when the Fortes nomination was first made, in their own vote counts about 70 votes for Fortes and for Thornberry to replace him on the associate slot on the court. Over time, because of his own problems and missteps, Fortes lost support. When a vote finally took

place, many senators were absent; it was already gone, but it was the delaying tactics through a filibuster clearly, declared to be such at the time, that made it so. And that's the case almost everywhere we go.

Now, there's another flaw in the logic here. Basically what Senator Frist and his allies have said is that it is clear that this is unconstitutional because the Constitution explicitly mentions cases in which supermajorities are allowed. It doesn't mention them in the case of judicial nominations and, therefore, they're not constitutional. Well, if that's true, then it is true as well for executive nominations where it's not mentioned and it's true as well for legislation other than treaties. So when Senator Frist says this only applies to judicial nominations, where is the logic in that? We are headed down a slippery slope where at some point in the future we will have two dangerous and awful precedents. One is you can ignore or break your own rules to change the rules and dare the courts to intervene, which they would never do in an instance of this sort. The second is you can block the filibusters against anything.

Now, why would this be bad? Basically because the essential character of the Senate in a system – a republican form of democracy trying to avoid the emotions of the majority is to provide some outlet for minorities of one sort of another. Change that and you really do move to the potential tyranny of the majority. There will always be a president, there will always be a congressional leader who so desperately wants to achieve a particular goal that the temptation to overrule precedent and rules will always be there.

Just look at how Speaker Hastert acted on the Medicare prescription drug bill, basically throwing regular order aside to have a three-hour vote between 3:00 and 6:00 in the morning. If he's desperate enough to do something like that, there will be a leader who will take this to the next step on executive nominations and then take it to the next step on legislation.

Let me say finally that we have had shifting notions and definitions of what liberal and conservative mean over hundreds of years. The 18th-century liberal is what we would not consider a kind of classic conservative, but if you think about the type of conservatism that we had through most of American history, and it's the kind of conservatism that Senator Byrd himself has espoused, but it has been there through many leaders in House and Senate, it's a conservatism that first and foremost respects the rule of law. Second, has a respect for the regular order and the rules and procedures of the game. And third, has a fear of and a disdain for plebiscitary democracy and a belief in the institutions of governance.

Ladies and gentlemen, this action is not conservative. It is in every particular radical. If we get Senators like Pete Domenici, Richard Luger, Thad Cochran, John Warner, and Ted Stevens, who know better, going along with this, it will be something that will be remembered in their own record of service in the Senate along with others who would accept this rash act.

Thanks.

(Applause.)

MR. PODESTA: Thank you, Norm. I'm going to – I think we've got a microphone and I'm going to – in the interests of time I'm going to open it up first to reporters, if they have any questions. I know there are some here. Please identify yourself and please, no speeches. Questions only. While the microphone is coming into the room, I would note that Norm mentioned *Mr. Smith Goes To Washington*. Our sister organization, the American Progress Action Fund, and People for the American Way are sponsoring a discussion tonight of the nuclear option and a screening of the 1939 Frank Capra film, *Mr. Smith Goes to Washington*, in case any of you wants to bone up on it. It takes place in the Russell Senate Caucus Room at 6:00 o'clock tonight.

Go ahead. Please identify yourself.

Q: Yes. Is this on?

MR. PODESTA: Yeah.

Q: Yeah. I'm Ed Spanos from *Executive Intelligence Review;* that's the Lyndon LaRouche organization. Senator Biden yesterday on ABC said that the issue on the nuclear option is not abortion or these other hot-button issues, but it's a question of rolling back the New Deal, and he particularly cited Janice Rogers Brown in this respect. And he also quoted from the *New York Times* article of last week on "The Constitution in Exile." Now, you have to wonder which Constitution they're talking about, because it was the Confederate Constitution of 1861 which eliminated the principle of the general welfare and public works.

MR. PODESTA: Question.

Q: The question is, what is your comment on this idea that the fundamental issue here actually is rolling back the New Deal and the shift in the Supreme Court in 1937?

MR. PODESTA: Michael?

PROF. GERHARDT: I don't know if I could say it's that well defined, but I do think that it's clear that the real concern for the proponents of the nuclear option is not so much what happens to these judges, but what happens with respect to the next Supreme Court vacancy – the next Supreme Court appointment or two.

The way I sometimes think about this is that it's important to remember the filibuster is not about sort of obstruction. It's also about compromise. It's about encouraging compromise. And you wouldn't have over 200 judicial nominations approved by the United States Senate without the support of Democrats.

Now, instead of compromising with respect to these particular judgeships and judicial nominations, proponents of the nuclear options want to break the rules. And the reason they do is because they don't just want to win – they're already winning – they want to win all the time.

MR. PODESTA: In the back.

Q: I'm Al Millikan affiliated with Washington Independent Writers. What would any of you say to those American progressives who think or suspect that a filibustering senator like Senator Robert Byrd is more concerned about hindering and blocking qualified and exemplary American blacks, Hispanics, Catholics, baby fetuses, and women and their progress more than any constitutional (love?)? In other words, such a senator may secretly be – still be more sympathetic to the Ku Klux Klan and their agenda than the progress of those who have been historically discriminated against in our society.

MR. ORNSTEIN: I would say that's nonsense. If you have watched Senator Byrd over 53 years – I've only been here for 36, but if you've read what he's written and going back if you read his history of the Senate, whatever his political views on whatever issues, there is no doubting the fact that this is a man who respects and reveres history, traditions, and the Senate, period. That's what this is all about.

MR. PODESTA: And I would only add to that that during my tenure working with the senator when I was in the White House, I think he stood up for working people and stood up for progressive ideals during that time, and I think that sometimes he disagreed with us. He let that be known on the floor, but I think he was always a person of honor and integrity.

Q: William Eale (ph). I'm an author. All the people of the press go on? Gentlemen, I guess the question behind the constitutional debates reminds me of the 1850s, and my question is, is that where we're headed with the driving (motor?) not the secessionists but a neotheocracy from the religious right?

PROF. GERHARDT: Well, I don't know. I'm going to hope we end up some more better than the 1850s, but you look rather young, I should say. But the – I do think that one thing that is important to keep our eye on is what people are talking about. It's not hard to find people on both sides of this issue. That's not going to be hard to find, but if that's what people are talking about, they're no longer talking about the rules and the merits of maintaining the rules. And it seems to me what we've got to – what I care about and what we ought to focus on is respecting the rules, respecting the rule of law, and amending the rules in accordance with the rules. And if people start arguing about other things, personalities or anything else, that must – that says to me they don't have arguments to make to justify the breaking of the rules.

MR. ORNSTEIN: That's – it's an interesting question. I don't think that this is some great conspiracy to bring us a theocracy. I do think what's happening here is that there is a casual regard for rules, a sense that the ends justify the means, a belief – and Senator McCain warned against this – that because we're in the majority, we'll always be in the majority and an unwillingness to think ahead to what happens when you're back in the minority, or a belief that when you're back in the minority you can somehow brazen it through and keep the same sort of thing happening to you, and an unwillingness to understand that there are consequences for this.

The short-term consequences are that – not that, as David Broder suggested, we'll have a Newt Gingrich-style shutdown of the government. That's not going to happen. What's going to happen is that the Senate, which operates by unanimous consent, which has forced a kind of bipartisanship as Michael has suggested, even when people weren't necessarily going to move in that direction, will get its arteries clogged very easily and a lot of things will not happen or will happen with immense discomfort in the short run.

But the larger danger, getting back to the plebiscitary issue, is that emotions of the moment will move forward and sweep away checks and balances. Frankly, we came very close to having this happen with the Schiavo case. And most of the judges who slapped down the Congress, causing Tom DeLay to have a conniption, were conservative judges appointed by Republicans who said this piece of legislation drafted in haste out of emotion is flatly unconstitutional. Anybody looking at it with any – basically stepping back at all dispassionately would come to that conclusion. It's not just that it will be religious conservatives whose passions take over at any given moment; it can be any number of people on the left or the right. And it's one reason why, even if you have had problems with filibusters in the past – there hasn't been a president or a majority leader who hasn't been frustrated at times. When you step back and think about it through the larger sweep of history, it has really been a bulwark against this kind of majority sentiments sweeping over.

We haven't always succeeded in that task as the internment of the Japanese will tell you. But what that will also tell you is no matter what your democratic traditions in a society, majorities will overstep, and you've got to have checks and balances. And this is a prime check and balance.

MR. PODESTA: Time for one last. Michael, I'd just invite you for any closing comments.

PROF. GERHARDT: Well, I just want to echo what Norm has said and what Senator Byrd has said. I think – I might just actually end on a more personal note. And that is, I would share Norm's disappointment in how this gets reported. I understand the pressures and incentives on that front, but it's a shame that so many times assertions and claims can be made about the filibuster that are just simply false, and even about the rules that are not well grounded. And all I can ask for is an effort to be as thorough as possible to keep people honest.

MR. PODESTA: Norm?

MR. ORNSTEIN: I've been, as I mentioned, in Washington for 36 years and my professional career has been wrapped up very much in these institutions in Washington, and particularly Congress. I love Congress, even when it gets frustrating at times. But what I find most dismaying, and it's a dismay I know is shared by a lot of people across the political spectrum who are also basically dedicated to these institutions is the collapse of the regular order in so many ways.

The rules exist for a reason and the delicate processes that the framers set up so that you could really try and come to some kind of consensus before acting in most cases so that you would have respect for all different elements in the society are now really under siege. We've got a lot of people who think that they can turn this into a parliamentary system basically right now, because they've got the reins of power and can invoke party discipline. I think at some point we'll go too far and some of the institutionalists on the Republican side, including some whose names I mentioned who are probably going to go along with this out of misguided loyalty will step back and bring about a little more of a check. But we all ought to be concerned when regular order goes. And there were abuses by Democrats – plenty of them when they were in the majority for 40 consecutive years in the House of Representatives, and for almost that length of time, 26 straight in the Senate, and then six more soon thereafter. It happens when you're in the majority for any length of time.

But now we see those abuses taken to a very different level and with a casual regard for the rules and order that has generally been the hallmark, even in frontier days, in this society. It's really not a very good development. That's why plenty of conservatives like George Will and others who have written about this are uneasy; plenty more are privately. I hope some of them will step forward publicly.

MR. PODESTA: Thank you.

Well, there are plenty of panels in Washington that shed more heat than light. I want to thank Senator Byrd and I want to thank Professor Gerhardt and Norm Ornstein for reversing that trend and really shedding a lot of light on both what the stakes are in this debate and in this battle, and also what the history and precedence and what the constitutional underpinnings are with regard to preserving the rules of the United States Senate. So join me in thanking them all for terrific presentations.

(Applause.)

(END)

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