

Nuclear Option on Hair Trigger: Profiles of the Detonators

by Edward Spannaus

“We stand here on the precipice of a Constitutional crisis,” declared Sen. Charles Schumer (D-N.Y.), as the Senate Judiciary Committee voted on May 12, on a straight party-line vote, to send to the Senate floor another of President Bush’s “filibuster bait” nominations, that of William Pryor to sit on the 11th Circuit Court of Appeals.

“Bill Pryor is the last of the four most controversial nominees that the President has sent our way. And his being placed once again on the calendar, is nothing more than a stage-setter for an attempt to undo what the Senate’s been all about for over 200 years, to invoke the nuclear option, to remove checks and balances, to come up with a Senate where if you get 51 or 52 or 53 Senators, or a President who has 51.5% of the vote, you should get your way 100% of the time.”

“That’s not what the Senate has ever been about,” Schumer continued. “That’s not what the Constitution has ever been about. And there’s almost a petulance in the air: We demand our way on every judge.”

For weeks, Senate watchers and the news media have been predicting that Senate Majority Leader Bill Frist (Tenn.) and Vice President Dick Cheney are on the verge of triggering the “nuclear option”—the arbitrary rule-change under which the 200-year old tradition of extended debate (the “filibuster”) would be barred for judicial nominations. During the week of May 9, there was an escalation of White House and Republican rhetoric around the nuclear option, with Frist suggesting that he might trigger it the following week.

On May 9, President Bush, from Tbilisi, Georgia, in the former U.S.S.R., issued a statement calling for immediate vote on two of his nominees, Priscilla Owen of Texas, and Terrence Boyle of North Carolina. This was followed by Attorney General Alberto Gonzalez repeating the same thing. On May 10, Frist said that the Senate had two bills that could be finished by the end of that week, and then, he said, the Senate should take up the judicial nominations.

Senate Democratic Leader Harry Reid (Nev.) reportedly offered a proposal to Frist on May 9, in which Democrats would allow a vote on the least controversial of the seven nominees, Thomas Griffin of Utah; Frist rejected even this, demanding that all seven get up-or-down votes.

“This fight is not about seven radical nominations; it’s about clearing the way for a Supreme Court nominee who only needs 51 votes, not 60,” Reid said the next day. “They

want a Clarence Thomas, not a Sandra Day O’Connor or an Anthony Kennedy or a David Souter” (all of whom happen to be Republican appointees). “George W. Bush wants to turn the Senate into a rubber stamp for his right-wing agenda and radical judges,” Reid charged.

The Detonators

Most likely to be put forward first, would be one of the following six re-submitted Bush nominees:

William H. Pryor: Nominated for U.S. Court of Appeals for the 11th Circuit, which covers Alabama, Georgia, and Florida. Pryor was Attorney General of Alabama; his nomination was blocked in 2003, was re-submitted by Bush this year, and was just voted out of committee.

Michael Greve of the American Enterprise Institute, a spokesman for the Constitution in Exile movement (see *EIR*, May 6) has the highest praise for Pryor, describing him as “sensational.”

During the May 12 Judiciary Committee meeting, Sen. Patrick Leahy (D-Vt.) said: “What I oppose with William Pryor is extreme ideas about what the Constitution says about federalism, criminal justice, death penalty, violence against women, the Americans With Disabilities Act, and the government’s ability to protect the environment on behalf of the American people.” Leahy noted that Pryor is “candid about the fact that his views of federalism is different from the current operation of the federal government, and that he’s on a mission to change the government.”

“When it comes to states’ rights,” Senator Schumer said, “Mr. Pryor has been one of the staunchest advocates of efforts to roll back the clock in terms of federal and government involvement—not even to the 1930s, but sometimes to the 1890s.” Schumer also pointed out that, as Alabama Attorney General, “he defended his state’s practice of handcuffing prisoners to hitching posts, in the hot Alabama sun for seven hours, without giving them even a drop of water to drink.” And when the U.S. Supreme Court said that this violated the 8th Amendment, “he criticized the Supreme Court as misinterpreting the 8th Amendment.”

Janice Rogers Brown: Presently a California Supreme Court Justice, she is nominated for the U.S. Court of Appeals

for the D.C. Circuit. A poster-child for the Constitution in Exile movement, Brown is a disciple of feudalist Friedrich von Hayek and his view that government intervention in the economy is “The Road to Serfdom,” and also of von Hayek’s evil ideological godfather, Bernard Mandeville. She attacks the idea of human perfectibility, writing that “the belief in and the impulse toward human perfection, at least in the political life of a nation, is an idea whose arc can be traced from the Enlightenment, through the Terror, to Marx and Engels, to the Revolutions of 1917 and 1937,” explaining that 1937 “marks the triumph of our socialist revolution”—this being her famous reference to the year that the U.S. Supreme Court began to uphold President Franklin D. Roosevelt’s New Deal programs.

She has also stated that the effect of the New Deal “was not simply to repudiate, both philosophically and in legal doctrine, the Framers’ conception of humanity, but to cut away the very ground on which the Constitution rests.” And she says that the New Deal “was (and is) fundamentally incompatible with the vision that undergirded this country’s founding,” and that the New Deal “inoculated the federal Constitution with a kind of underground collectivist mentality.”

Priscilla Owen: A Texas Supreme Court Justice, nominated to the 5th Circuit Court of Appeals, covering Texas, Louisiana, and Mississippi. A Federalist Society member, she is regarded as being on the “far right wing” of the very conservative Texas Supreme Court; she was even accused of “an unconscionable act of judicial activism” by none other than now-U.S. Attorney General Alberto Gonzales, when he also sat on the Texas high court.

Prior to her being elected to the Texas Supreme Court in 1994—with Bush advisor Karl Rove having picked her for the race and guiding her campaign—she was just “a second-tier oil and gas litigator,” according to one account.

When her first nomination was blocked by a filibuster in 2003, the *Houston Chronicle* praised the action, stating that Owen’s record showed “less interest in impartially interpreting the law than pushing an agenda.” The *Austin-American Statesman* said that Owen “seems all too willing to bend the law to fit her views,” and that “Owen also could usually be counted upon in any important case that pitted an individual or group of individuals against business interests, to side with business.”

Terrence Boyle: Nominated for U.S. Court of Appeals for the 4th Circuit, which covers North and South Carolina, Virginia, West Virginia, and Maryland. Boyle, originally from New Jersey, went to North Carolina in the 1970s, where he worked for Sen. Jesse Helms (R) and espoused states’ rights. Helms got him a Federal judgeship in 1984, and then persuaded President George H.W. Bush to nominate him for the 4th Circuit in 1991. His nomination died in committee. Throughout the Clinton years, Helms blocked all Clinton

nominees for the 4th Circuit, going after blacks with special vehemence. Boyle was renominated by George W. Bush in 2001. His nomination was then blocked by Sen. John Edwards (D-N.C.), who thought the 4th Circuit needed another black judge (it has the highest percentage of black citizens of any judicial circuit).

Boyle has an extremely high rate of reversal of his District Court rulings (at least 150 times), particularly on civil rights cases; what makes this even more notable, is that the reversals were from the 4th Circuit, considered one of the most hostile circuits to civil rights in the nation.

Rep. Mel Watt (D-N.C.) wrote in a letter to the Senate Judiciary Committee: “His rulings show this judge to be especially determined to defy both the civil rights statutes enacted by Congress and the court rulings on which they are based.”

“A lot of people in North Carolina, including progressive white people, should be outraged that we are still living in the shadow of Jesse Helms,” Watt said in an April 10 press conference of civil rights leaders opposing Boyle’s nomination.

Thomas Griffin: Nominated to U.S. Court of Appeals for the D.C. Circuit. Griffin was Legal Counsel to the U.S. Senate during the impeachment of President Clinton; since then, he has made statements to the right-wing Federalist Society that he would have voted to convict Clinton and remove him from office. Griffin has the distinction of having practiced law without a license in both Washington D.C. and in Utah, while he was General Counsel to Brigham Young University. “This is a man who practiced law in two states in violation of the laws,” Senator Leahy has said, adding, “what a fine, fine standard the White House has” for its judicial nominees. In my state, he would be prosecuted. I’ve never seen anything so unbelievable.”

William G. Myers: Nominated for the U.S. Court of Appeals for the 9th Circuit, which covers nine states in the West. On March 17, the Senate Judiciary Committee voted out his nomination. Committee Chairman Arlen Specter (R-Penn.) had selected Myers’ nomination to go first, believing that this would be the easiest of Bush’s re-submitted nominations to get through, but at the March 1 hearing on the Myers nomination, Specter encountered much tougher opposition than he was anticipating.

Another favorite of “Constitution in Exile” adherents, Myers is a former lobbyist and Interior Department lawyer, and an extreme property-rights advocate who seemingly would do away with almost all Federal regulation. He has compared Federal land regulation to King George III’s “tyrannical” rule over the American colonies, which he says could lead to a “modern-day revolution” in the Western states. He is a big fan of failed Supreme Court nominee Robert Bork. He has never been a judge, and only rarely even has he appeared in court.