

Bipartisan Senators: We Have Kept the Republic

This May 23 press conference, announcing an agreement to prevent the “nuclear option,” was addressed by Senators John Warner (R-Va.), John McCain (R-Ariz.), Joseph Lieberman (D-Conn.), Ben Nelson (D-Neb.), Olympia Snowe (R-Me.), Mark Pryor (D-Ak.), Mike DeWine (R-Ohio), Robert Byrd (D-W.V.), Mary Landrieu (D-La.), Susan Collins (R-Me.), Lindsey Graham (R-S.C.), and Ken Salazar (D-Colo.).

McCain: We’re here, 14 Republicans and Democrats, 7 on each side, to announce that we have reached an agreement to try to avert a crisis in the United States Senate and pull the institution back from a precipice that would have had, in the view of all 14 of us, lasting impact, damaging impact on the institution.

I’m grateful for the efforts of Senator Frist and Senator Reid to come to an agreement on this issue. We appreciate very much their leadership. And we all appreciate each other’s involvement, but probably the two that I’d like to point out here that provided us with a beacon of where we should go, were Senator Byrd, our distinguished senior Democrat leader, and Senator Warner, who both were vital to this process.

You have before you the agreement and I won’t go in the details of it. But basically, all 14 of us have pledged to vote for cloture for the judicial nominees Janice Rogers Brown, William Pryor, and Priscilla Owen.

The signatories make no commitment to vote for or against cloture on two judges, William Myers and Henry Saad. Future nominations will—the signatories will exercise their responsibilities and the nominees should only be filibustered under extraordinary circumstances.

And in light of this commitment and a continuing commitment, we will try to do everything in our power to prevent filibusters in the future.

This agreement is meant in the finest traditions of the

Senate; it was entered into with trust, respect, and mutual desire to see the institution of the Senate function in ways that protect the rights of the minority.

So I’m very pleased to stand here with my other colleagues tonight and I believe that that goodwill will prevail.

Nothing in this agreement prevents any individual Senator from exercising his or her individual rights.

I would like to ask Senator Nelson and Senator Pryor—but I want to, again, thank my colleagues. And I believe that most Americans would like for us to work these issues out rather than pursue the procedure that we have just departed from, I hope.

Nelson: Well, thank you very much, Senator.

And I, too, am very proud to be here with my colleagues tonight.

And I’m glad to say that we have been able to reach an agreement, if you will, make a deal for the future to deal with the Senate business in a way that will keep the faith, will certainly keep the faith of the Framers of our country and the Founding Fathers. It will retain the individual rights and responsibilities of each Senator.

I think it’s a positive step for us to be able to set aside the nuclear option. It also gives as many judges as we possibly can under these circumstances an up-or-down vote.

So I think the good faith and the mutual trust that we have achieved here will carry over into this Senate on other business as well.

So, thank you to my colleagues. And you were asking just the other day how to handicap this. Well, I would have to say right now, it’s 100%. Thank you.

Pryor: Let me just say a couple of very quick words. And first thing I want everybody here to know: We don’t have a Thomas Jefferson in the bunch, OK? This came as a result of perspiration, not inspiration. As you know, we worked very, very hard to get here. It is in the finest traditions of the Senate and this agreement is based on trust. It’s based on trust.

And I know that people here want to ask a million “what ifs.” What if this? What if that? What about this person or that person, this circumstance?

Listen, there’s a lot of hypotheticals. We don’t know what is coming down in the future, but we do know that we trust each other.

The 14 of us have sat down, looked at each other, shaken hands, shared our hopes, our dreams, our fears, our frustrations, and this is based on trust.

And with that, what I would like to do is turn it over to Senator Warner for a brief word. And then he’s going to introduce Senator Byrd.

Warner: No, I’d like to yield to Senator Byrd.

Pryor: Senator Byrd, come up—

Byrd: I’ll wait my turn.

[crosstalk: Your turn is now! Your turn is whenever you want it.]

Warner: I would simply say, by way of introduction, we opened almost every meeting with Bob Byrd saying, “Coun-

United States Senate
WASHINGTON, DC 20510

MEMORANDUM OF UNDERSTANDING ON JUDICIAL NOMINATIONS

We respect the diligent, conscientious efforts, to date, rendered to the Senate by Majority Leader Frist and Democratic Leader Reid. This memorandum confirms an understanding among the signatories, based upon mutual trust and confidence, related to pending and future judicial nominations in the 109th Congress.

This memorandum is in two parts. Part I relates to the currently pending judicial nominees; Part II relates to subsequent individual nominations to be made by the President and to be acted upon by the Senate's Judiciary Committee.

We have agreed to the following:

Part I: Commitments on Pending Judicial Nominations

- A. *Votes for Certain Nominees.* We will vote to invoke cloture on the following judicial nominees: Janice Rogers Brown (D.C. Circuit), William Pryor (11th Circuit), and Priscilla Owen (5th Circuit).
- B. *Status of Other Nominees.* Signatories make no commitment to vote for or against cloture on the following judicial nominees: William Myers (9th Circuit) and Henry Saad (6th Circuit).

Part II: Commitments for Future Nominations

- A. *Future Nominations.* Signatories will exercise their responsibilities under the Advice and Consent Clause of the United States Constitution in good faith. Nominees should only be filibustered under extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.
- B. *Rules Changes.* In light of the spirit and continuing commitments made in this agreement, we commit to oppose the rules changes in the 109th Congress, which we understand to be any amendment to or interpretation of the Rules of the Senate that would force a vote on a judicial nomination by means other than unanimous consent or Rule XXII.

We believe that, under Article II, Section 2, of the United States Constitution, the word "Advice" speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

The historic agreement to end Dick Cheney's "nuclear option" (called the "constitutional option" by some Republicans). Sen. Lindsey Graham (R-S.C.) of Louisiana expressed the view of many of the signers when he said, "We're at war. Kids are dying as we speak. . . . That's why I changed my attitude and that's why I'm willing to change my vote, because this is a lot bigger than me."

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Byrd: Well, I remember Benjamin Franklin, the oldest in the group that signed the Constitution of the United States. He was approached by a lady who said, "Dr. Franklin, what have you given us?" And he said, "A republic, madam, if you can keep it."

We have kept it. We have kept the republic. I am very proud of these colleagues of mine on the Republican side and the Democratic side. We have lifted ourselves above politics. And we have signed this document in the interest of the United States Senate, in the interest of freedom of speech, freedom of debate, and freedom to dissent in the United States Senate.

And I say thank God, thank God for this moment, and for these colleagues of mine, thank you very much. Thank you.

Warner: I've said very little throughout this entire process. I think it was a privilege to be associated with these individuals. And I'll say very little now, except it's been a remarkable study of Senate history and the history of our country throughout this whole process. And the one unanswered question that guided me all the way through is—it was unanswered—what would happen to the Senate if the nuclear option were done? No one was able to answer that to my satisfaction.

DeWine: I think this is a good day for the United States

Senate, but I think, more important, it's a good day for the country. I felt that why we got into this, of course, the whole situation is, I felt that the status quo that we have seen for the last several years was not acceptable. Many of us on our side of the aisle certainly did, that the filibuster is being used too often.

But I also felt that the use of the constitutional option would not be good for the Senate nor good for the country. So really we are faced with two bad options. And I sought this compromise as a way to avoid the options, and frankly two bad options. Frankly, to try to put us back in the position we were a few years ago, where a filibuster was available, but frankly not used very often.

And I think if you look at the language that we have here, I think we have achieved this.

This agreement is based on good faith, good faith among people who trust each other. And it's our complete expectation that it will work. Senators have agreed that they will not filibuster except in extraordinary circumstances. We believe that that will, in fact, work.

Some of you who are looking at the language may wonder what some of the clauses mean. The understanding is—and we don't think this will happen—but if an individual Senator believes in the future that a filibuster is taking place under

something that's not extraordinary circumstances, we of course reserve the right to do what we could have done tomorrow, which is to cast a "yes" vote for the constitutional option.

I was prepared to do that tomorrow if we could not reach an agreement. But thank heavens we do not have to do that. And it's our hope that we will never have to do that.

So I think this is a very good day for our country, a good day for the United States Senate. It will enable us to get back, frankly, to the people's business and to deal with the issues that I think the American people expect us to deal with every day.

Lieberman: Thanks, Mike. That phone going off was McCain being told to go and see the preview of the movie about himself. Everybody should go see it.

Maybe in that spirit I should say how great it is to be a member of this band of brothers and sisters. We came together and did the unexpected. In a Senate that has become increasingly partisan and polarized, the bipartisan center held.

And as those who have preceded me have said over and over again, each of us accepted parts of this agreement which were not perfect to our desires, but we did it for a larger purpose: to save the right of unlimited debate, to take the Senate back from the precipice.

And if the nuclear option had been passed, I think it would have led to a cycle of increasing divisiveness in the Senate and decreasing productivity in terms of the people's business.

So I thank all who worked so hard to make this happen. I'm proud to be part of it. And I hope maybe this empowered bipartisan center will decide that it's been good to work together, and we'll keep on working together to get some good things done for the American people.

McCain: I do have to go, too. The first question that most of the media are going to ask us: Who won and who lost? The Senate won, and the country won.

Snowe: Let me just say that I'm very pleased to be part of this group and my colleagues in achieving this historic compromise. What bound us was the belief, the strong belief, that exercising the pending motion of this constitutional option would be detrimental to the long-term well-being of the United States Senate.

And I believe that this compromise reflects the better traditions of the Senate. And that is comity, cooperation, and collaboration. I do believe as well that this is the essence of what our Founding Fathers designed the United States Senate to be. And that is an institution that achieves results through accommodation and collaboration.

We believed as well that the American people didn't deserve the option of just blanket filibusters or historic parliamentary maneuvers that overturned 200 years of tradition and precedent. What they did deserve is to have meaningful and good-faith collaboration among Republicans and Democrats united to do what was in the best interest of this institution, not just for the short term, for the long term.

Landrieu: I would just add that I was proud to be a part

of this group and believe so strongly that, had the nuclear option been invoked, that the Senate would have perhaps passed a point of no return. And that would have been a very sad day indeed for our country.

One of the strongest parts of this compromise is that we hope, the group of us that trust each other, that have worked together across the aisle on many, many, many important issues and will continue to do so, is that we can return to the early practices of our government, that we can reduce the rancor that unfortunately accompanied the advise and consent process in the Senate in the last few years.

We firmly believe that this agreement is consistent with the best traditions of the Senate.

So what we have come to is a pause, a hope, a chance that we can pass this difficult point, return the right of the minority to speak up and to be heard, but most importantly to encourage advice from the Administration to the Senate in a way that will move this country forward.

Collins: I'm reminded of that old expression that everything has been said, but not everyone has said it at this point. You're going to hear over and over again the words "good faith," "mutual respect," and "trust," because those words characterized our negotiations. Hour after hour, day after day, we kept working toward a goal that we all believed in.

People asked me, repeatedly, whether or not I thought we would reach an agreement. And I always said, "Yes, I think we will." Because everyone involved was committed to avoiding this very painful, bitter, and prolonged dispute in the United States Senate.

All of us love the United States Senate. We're very proud of our work today. And it is my hope that this can be a model for us as we go forward to confront the important issues facing our country.

Graham: Like Mike [DeWine], I was prepared to vote "yes." I've been saying for two years that I thought the filibuster was sort of out of bounds.

And the question I started asking myself is: If you do everything you want to do in life, that's your right. But there's some things you can do, maybe you shouldn't do.

We're at war. Kids are dying as we speak. And now I think the Senate is back in business. I could vote to change the rules. And like John, said, "I don't know what would happen." Senator Warner said, "I don't know what would happen."

Here's what I know is going to happen now. People at home are going to be very upset at me for a while.

Judges are going to get a vote that wouldn't have gotten a vote otherwise. We're going to start talking about who would be a good judge and who wouldn't. And the White House is going to get more involved and they are going to listen to us more.

Some of them are going to make it on our up-and-down vote and some of them won't. And that's been the history of the Senate for 200 years.

Bottom line: We can repair it in a way that will allow the country to have a Senate that functions for the common good, because Social Security is coming apart and kids are dying. That's why I changed my attitude and that's why I'm willing to change my vote, because this is a lot bigger than me.

Salazar: Let me first say there are two colleagues that signed the agreement who are not here today, Senator [Daniel] Inouye [D-Hi.] and Senator [Lincoln] Chafee [R-R.I.]. And I think they represent in the same way the spirit of bipartisanship and cooperation that you see among the Senators who are here at this press conference.

For me, I am ranked number 100 in the United States Senate. Senator Byrd is number one. And I think that when you look at where we come from, we come from a sense of wanting to have solutions for the problems that face our country.

For me, even though I have been here only a period of approximately five months, what I have found most troubling about Washington, D.C., is the poisonous atmosphere of partisanship that exists in this Capitol.

And I'm hoping that the statement that these Senators are making here today is a statement that says that in order for us to solve the problems of our country in this generation and to the future, it's going to require people that are wanting to unite us, not people who want to divide us. And I think this is a statement of unity that you see coming from these Republican and Democratic Senators who are here before you today.

Warner: Before we close out our opening remarks, all of us have gained a tremendous respect for the leadership shown by Senator McCain and Senator Ben Nelson. So with that, let's open the floor for just a few questions.

Q: Senator Warner, again, of course, I know you talked a lot about trust being the operative mechanism here, but how will the group of you determine whether a Senator's objection to a judge falls into the category of extraordinary or not?

Warner: It's subjective. It's very clear and subjective. And let me talk a little bit about the group. We're not trying to set ourselves up as some mini-structure in this system, in any way to challenge our leadership. I personally [think] that in due course our leaders are able to reconcile such differences as they have, and that this thing will flow with the traditions of 216 years in our Senate.

Q: You've been meeting and talking for days. Can you describe for us what was the turning point that allowed you to come together and reach this agreement? What happened?

Warner: I think the ability for all of us to meet freely together, express our views and I think we have good, strong leadership here. Senator Byrd was present. These two leaders behind us.

Do you want to add something?

Collins: Yes. The impetus was when the vote was scheduled. We realized it was now or never.

DeWine: We ran out of time.

Q: Senators, your agreement is silent on most of the Michigan judges. Was that because of the offer that Senator Reid had already made?

Warner: We'll not get into picking judges up here.

DeWine: We were silent about a lot of judges.

Q: What happened with the proposal having to do with [inaudible] recommendations to the White House—

Warner: That was carefully thought through and Senator Byrd and I over the weekend, talked to him a half-a-dozen times and we came up with revised language—

[cross-talk]

Lieberman: Which was actually broader.

Warner: But very clearly pointing out the use by the Founding Fathers of the words "advice and consent." And that is spelled out in that second sentence about the consultation—

Q: Does this mean that a Supreme Court nominee will not be filibustered?

Nelson: No. If there's a Supreme Court nominee that would fall within the category of extraordinary circumstances, that Supreme Court nominee could get filibustered. The key here is that we're operating in good faith, so that there's no intent to try to do this in some way other than extraordinary circumstances.

But we did reserve, and as we must, the individual right and responsibility to exercise judgment and discretion in determining extraordinary circumstances.

Now, obviously, we'll be judged in part by our colleagues as to our sincerity and our intent. We think that happens in any event. This agreement is no different.

DeWine: Let me just add something to that, if I could. And we believe that that's not going to happen. But we also, of course, implicit in this, is that we reserve the right that [if] we don't believe that they have exercised good faith and have filibustered in something that is not extraordinary circumstances, we reserve the right, of course, then to—

Unknown: Individually.

DeWine: —individually, on individual decisions, to vote "yes" on the issue of the constitutional option.

Lieberman: Let me just add one word on this point. We've made promises, expressions of good faith. And our intention is to make sure that those are realized, that filibusters only occur at extraordinary circumstances, and that there will be no so-called nuclear option.

But I think it's very important to say that we've come together through this process. And that this is not a case where we signed a piece of paper and we're going to walk away. We've all agreed to continue to consult with one another, particularly if we reach the moments where we question whether we have seen an extraordinary circumstance.

So there's a process to guarantee.

Warner: Folks, we thank you very much. Thank you. Good night.