

Frist: Up or Down, Up or Down, Up or Down

Senate Majority Leader Bill Frist (R-Tenn.) made the following remarks on May 23 on the Senate floor.

Mr. President, I have had the opportunity to review the agreement signed by the Senator from Virginia, the Senator from Arizona, the Senator from Nebraska, and 11 other Senators, an agreement that I've reviewed, but to which I am not a party.

Let me start by reminding the Senate of my principle, a simple principle that I've come to this floor day after day stating, stressing. And it is really this: I fundamentally believe that it is our constitutional responsibility to give judicial nominees the respect and the courtesy of an up-or-down vote on the floor of the United States Senate.

Investigate them, and question them and scrutinize them and debate them in the best spirit of this body. But then vote. Up or down, yes or no, confirm or reject, but each deserves a vote.

Unlike bills, nominees can't be amended. They can't be split apart. They can't be horse-traded. They can't be log-rolled. Our Constitution does not allow for any of that. It simply requires up-or-down votes on judicial nominees.

So in that regard, the agreement announced tonight falls short of that principle. It falls short. It has some good news and it has some disappointing news. And it will require careful monitoring.

Let me start with the good news. I'm very pleased, very pleased that each and every one of the judges identified in the announcement will receive the opportunity of that fair up-or-down vote.

Priscilla Owen: After four years, two weeks, and one day, she will have a fair and up-or-down vote.

William Pryor: After two years and one month, he will have a fair up-or-down vote.

Janice Rogers Brown: After 22 months, a fair up-or-down vote.

Three nominees will get up-or-down votes with certainty now because of this agreement, whereas a couple of hours ago, maybe none would get up-or-down votes. And that would have gone wrong.

And with the confirmation of Tom Griffith to the D.C. Circuit Court of Appeals, which we've been assured of, though it is not part of this particular agreement, there will be four who will receive up-or-down votes.

And based on past comments on this floor although not in the agreement, I expect that David McKeague, after three years and six months, will get a fair up-or-down vote.

I expect that Susan Neilson, after three years and six months, will get a fair up-or-down vote.

And I expect that Richard Griffin, after two years and 11 months, will get a fair up-or-down vote.

Now the bad news to me, or the disappointing news in this agreement: It's a shame that well-qualified nominees identified by those 12 nominees are threatened still with not having the opportunity to have the merits of their nominations debated on the floor.

Henry Saad has waited for three years and six months for the same courtesy. Henry Saad deserves a vote. Not in this agreement.

William Myers has waited for two years and one week for a fair up-or-down vote. He deserves a vote. But not in this agreement.

If Owen, Pryor, and Brown can receive the courtesy and respect of a fair up-or-down vote, so can Myers and Saad.

So I will continue to work with everything in my power to see that these judicial nominees also receive that fair up-or-down vote that they deserve. But it is not in this agreement.

But in this agreement is other good news. It's significant that the signers give up using the filibuster as it was deployed in the last Congress in the last two years. The filibuster was abused in the last Congress.

Ten nominees were blocked on 18 different occasions, 18 different filibusters in the last two years alone, with a leadership-led minority party obstruction threatening filibusters on six others.

That was wrong. It was not in keeping with our precedents over the past 214 years. It made light of our responsibilities as United States Senators under the Constitution. It was a miserable chapter in the history of the Senate, and I believe brought us to a new low.

Fortunately, tonight, it is possible that this unfortunate chapter in our history can close, because this arrangement makes it much less likely, indeed nearly impossible for such mindless filibusters to erupt on this floor over the next 18 months. And for that I am thankful.

Circuit Court and Supreme Court nominees face a return



Sen. Majority Leader Bill Frist in a happier day (May 19), before the accord to block the nuclear option. He was trying to rally African-American pastors to support Bush's nomination of fascist judges.

to normalcy here in the Senate where nominees are considered on their merits. The records are carefully examined. They offer testimony. They are questioned by the Senate Judiciary Committee. The committee acts and then the Senate discharges its constitutional duty to vote up or down on a nominee.

So given this disarmament on the filibuster and the assurance of fair up-or-down votes on nominees, there is no need at present for the constitutional option. But with this agreement, all options remain on the table, including the constitutional option.

If it had been necessary to deploy the constitutional option, it would have been successful and the Senate would have, by rule, returned to the precedent in the past 214 years. Instead, tonight, members have agreed that this precedent of up-or-down votes should be a norm of behavior as the result of the mutual trust and goodwill in that agreement.

I, of course, will monitor this agreement carefully as we move ahead to fill the pending 46 Federal vacancies today and any other vacancies that may yet arise during this Congress.

I have made it clear from the outset that I haven't wanted to use the constitutional option. I do not want to use the constitutional option. But bad faith and return to bad behavior during my tenure as majority leader will bring the Senate back to the point where all 100 members will be asked to decide whether judicial nominees deserve a fair up-or-down vote. And I will not hesitate to call all members to their duty, if necessary.

But for now, Mr. President, ratify that our principle of constitutional duty to vote up or down has been taken seriously, and as reflected in this agreement, I look forward to swift action on the identified nominations.

Now, the full impact of this agreement will await its im-

plementation, its full implementation.

But I do believe that the good faith and the goodwill ought to guarantee a return to good behavior, appropriate behavior on the Senate floor, and that when the gavel falls on this Congress, the 109th Congress, the precedent of the last 214 years will once again govern up-or-down votes on the floor of the United States Senate.

Now, this will be spun as a victory, I would assume, for everybody. Some will say it is a victory for leadership, some for the group of 14. I see it as a victory for the Senate. I honestly believe it is a victory for the Senate where members have put aside a party demand to block action on judicial nominees. They rose to principle and then acted accordingly.

I'm also gratified with how clearly the Democratic leader has repeated over and over again during this debate how much he looks forward to working with us, and I with him, as we move forward on the agenda of the 109th Congress.

Our relationship has been forged in part by circumstance, but it has been leavened by friendship. I look forward to working with him as we work together to move the nation's agenda forward together.

We've got a lot to do, from addressing those vital issues of national defense and homeland security, to reinforcing a bill that hopefully will come very soon addressing our energy independence, our role as a reliable and strong trading partner, to an orderly consideration of all the bills before us about funding and to put the deficit on the decline.

I look forward to working with the Democratic leader on these and many other issues of national importance.

Mr. President, a lot has been said about the uniqueness of this body. And, indeed, our Senate is unique. And we all, as individuals and collectively as a body, have a role to play in ensuring its cherished nature remains intact.

And, indeed, as demonstrated by tonight's agreement and by the ultimate implementation of that agreement, we have done just that.

It has withstood mighty tests that have torn other governments apart. Its genius is in its quiet voice, not in any mighty thunder. The harmony of equality brings all to its workings with an equal stake at determining its future.

In all that the Senate has done in the last two years, I, as leader, have attempted to discharge my task to help steward this institution consistent with my responsibilities, not just as majority leader and not just as Republican leader, but also as a Senator from Tennessee.

In closing, tonight, Mr. President, with this agreement, the Senate begins the hard work of steering back to its better days, leaving behind some of its worst.

While I would have preferred and liked my principle of up-or-down votes to have been fully validated for this Congress, now we have begun our labors for fairness and up-or-down votes on judicial nominees with a positive course.

And as all involved keep their word, it should be much smoother sailing.