

## Judicial Tyranny and the Loss of Self-Government



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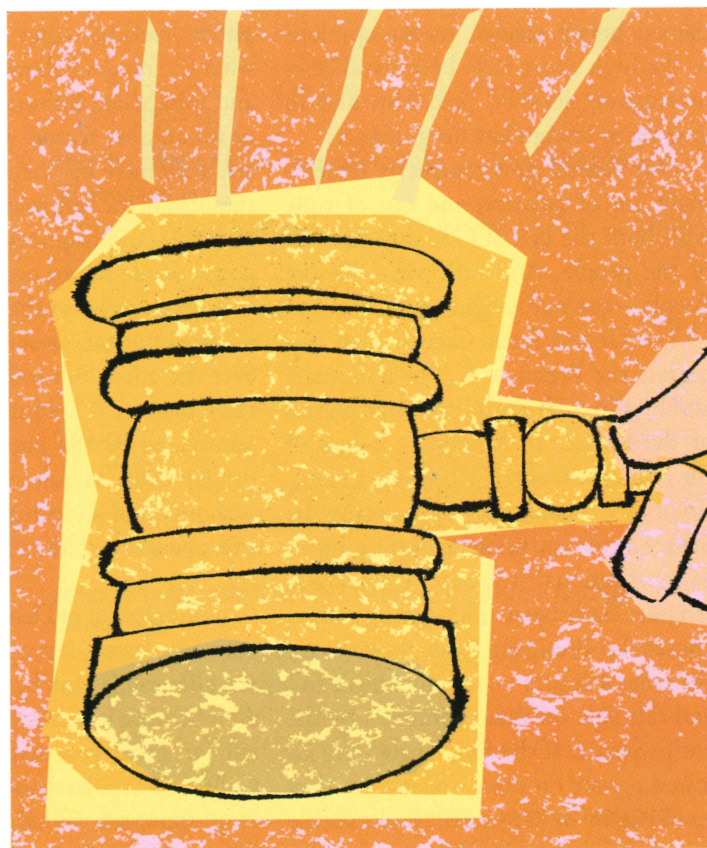
“Dad, this is ‘the bomb,’ the

‘Mac Daddy’...” These are just a couple of the ‘cool’ and ‘farout’ (my old words) terms my kids use to tell me if something is really significant or important. During the early days of the war in Iraq; etched in my brain was a bomb I saw in a news update with the letters “MOAB” painted on it—only to realize that it meant the “Mother Of All Bombs.” Now, I am not a Chicken Little and I don’t often write about political matters, but the issue of judicial tyranny and the encroaching loss of self-government in America have reached a crisis and a crossroad for

Christian leaders. Never in our history as a nation have judges so arrogantly implanted their own views into the law, making it up according to their own leftist policy prescriptions instead of interpreting it as the Congress and the Constitution require.

The list of cases where judges have abused their authority and given us decisions that mock God or violate the will of the American people is intolerably long. During my lifetime alone, we have witnessed U.S.

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“All that is necessary for the triumph of evil is that good men do nothing.”

— Edmund Burke



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Supreme Court opinions scrubbing prayer from public schools, then the Lord's Prayer and the reading of Bible passages were banned, and then the Ten Commandments were stripped from the schools. The Court also legalized abortion, then extended abortion to the entire nine months of gestation, and recently legalized homosexual sodomy. And in order to achieve its own foreordained policy results, recent opinions of the high court have been cavalier in overturning its own precedent and in looking to foreign law for guidance.

Our federal government is increasingly out of balance, and out of tune with both the law of God and the will of the people. And only we—We the People—can put it right again.

The United States Constitution empowers the President "... to nominate, and by and with the advice and consent of the Senate, to appoint... judges of the Supreme Court." However, a handful of U.S. senators are, by misusing the Senate's rule on filibuster, engaging in a constitutional travesty. Democratic senators have been filibustering judges chosen by President Bush to serve on the federal courts—and blocking a full and fair vote on these nominees by the entire Senate. If the full Senate were allowed to vote on these fine judges, they would easily be confirmed. But a hostile minority is using the filibuster tactic to prevent such a vote—purely for ideological reasons, and acting as if the Senate has equal say with the president about who sits on the court. That is nonsense.

The Constitution could not be clearer. The nomination to the court is made by the president alone. The Senate is to give its advice and consent—not demand, as in the case of abortion, a politically partisan vote beforehand. The advice and consent clause, Alexander Hamilton wrote in the Federalist Papers #76, was intended to provide

a check upon a president who would, say, appoint his brother, or engage in favoritism, or reward personal benefactors—nothing more. And yet, today a Senate minority is using the filibuster to prevent a vote on highly qualified judges, like Bill Pryor or Miguel Estrada, an able Hispanic lawyer who was nominated and had to be withdrawn, and Janice Brown, an African-American judge from California.

The grounds for opposition are not what the framers intended—they are purely political—they simply don't like what the judges believe. This unethical and misapplied filibuster should offend us for another reason. America's founders, informed by their biblical understanding of the Fall, provided for a system of checks and balances so that political power would not be overly concentrated and corrupted—so that no one branch of government would have power over the other. But today a minority in the Congress is holding hostage judges nominated by the president. This is a fundamental assault on both creative authority and an independent judiciary and a violation of the separation of powers.

The behavior of Democratic Senators who once hated, but now fully support, the filibuster is rank hypocrisy. But they do it because it protects the only avenue left for leftist governance—the courts. California Sen. Barbara Boxer was a lifelong opponent of judicial nomination filibusters. Suddenly the light dawned, and now she realizes how wrong she was to oppose them: "I thought I knew everything. I didn't get it... I am here to say I was totally wrong."

Many other leading Democratic senators have had similar, 180-degree changes of view. Ted Kennedy, Joe Biden, Robert Byrd, Tom Harkin, Joe Lieberman, Pat Leahy, and Chuck Schumer have all vigorously opposed the use of the filibuster against judicial nominations. Sen. Schumer was for voting judicial nominations "up or

down" without delay. Sen. Leahy flatly opposed a filibuster against Clarence Thomas's Supreme Court nomination: "The president and the nominee and all Americans deserve an up-or-down vote." Sen. Kennedy held that, "Senators who believe in fairness will not let the minority of the Senate deny [the nominee] his vote by the entire Senate." Sen. Harkin believed, "The filibuster rules are unconstitutional."

But that was then, when Democrats controlled the Senate. Now, they are a frustrated minority and things are very different. Sen. Leahy has voted against cloture to end filibusters 21 out of 26 times; Sen. Kennedy, 18 out of 23. Now all these Senators practice and defend the use of filibusters against judicial nominees. Of the 51 judges President Bush has nominated for the circuit courts of appeals, 35 have been confirmed, 10 have been filibustered, and six were threatened with a filibuster, so no action has been taken on their nomination. Mr. Bush nominated Justice Priscilla Owen of the Texas Supreme Court for the Fifth U.S. Circuit Court of Appeals nearly four years ago. She has the highest possible rating from the American Bar Association, but has been filibustered four times by a Senate minority that once devoutly believed filibustering was morally wrong and clearly unconstitutional.

The time is past due to reign in leftist judges who flout the law of God and pervert the will of the American people. We sent out a CounselAlert in early April when the Senate was debating whether to change its rules so that a simple majority could confirm a judge. The phone lines were jammed. Our goal is to prevent judicial nominees from being filibustered and allow a simple up-and-down vote by the full Senate of the president's nominees. *It would not affect the filibuster in any area of other legislative action.*

Clearly it is time to act. I'd love to hear your thoughts. ☞