

**Received(Date):** 14 MAY 2003 17:27:38  
**From:** Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP [ WHO ] )  
**To:** Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )  
**Subject:** : Split.  
[P\\_ALEFG003\\_WHO.TXT\\_1.html](#)

##### Begin Original ARMS Header #####  
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)  
CREATOR:Tim Goeglein ( CN=Tim Goeglein/OU=WHO/O=EOP [ WHO ] )  
CREATION DATE/TIME:14-MAY-2003 17:27:38.00  
SUBJECT:: Split.  
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN  
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is this true?

tsg

----- Forwarded by Tim Goeglein/WHO/EOP on 05/14/2003  
05:26 PM -----

Sean Rushton <SRushton@CommitteeforJustice.org>  
05/14/2003 12:30:40 PM  
Record Type: Record

To: SRushton@CommitteeforJustice.org  
cc:  
Subject: Split.

The Hill - 5/14/03

GOP splits over tough tactics on Bush judges  
By Alexander <[http://www.hillnews.com/about/alexander\\_bolton.shtm](http://www.hillnews.com/about/alexander_bolton.shtm)>  
Bolton

Senate Republicans are split on forcing a change of filibuster rules that have prevented the Senate from voting on two of President Bush's judicial nominees.

Nevertheless, a number of GOP lawmakers seem undaunted by a parliamentary maneuver that could permanently change the nature of the Senate.

"I think some are concerned it may upset the whole way the Senate operates and make it more like the House," said Sen. John McCain (R-Ariz.), referring to a bold Republican proposal that has become known as the nuclear option.

"You could make the argument for [banning the filibuster of] judges. I think you could make the same case for laws," he added.

McCain said he doesn't know if Majority Leader Bill Frist (R-Tenn.) will go through with the controversial tactic, but predicted he will be "very cautious in his approach."

Frist confirmed Tuesday he and other Republican leaders are weighing three options for breaking the Democratic filibuster of President Bush's judicial nominees.

One of the options is to ban the filibuster of judicial nominees through a rare parliamentary maneuver that has become known as the "nuclear option."

However, Frist said he would prefer a second option, which would be to formally change Senate rules through the Rules Committee. The first option would require the support of only a simple majority of senators to implement while the second would likely require the votes of 67 lawmakers.

A third option, put forth by two freshman Republicans, Sens. Saxby Chambliss (Ga.) and Lindsey Graham (S.C.), is to file a lawsuit against the Senate challenging the Democratic filibuster of judicial nominees on constitutional grounds.

But challenging the constitutionality of the Democratic filibuster in court has raised the question of whether a judge would be willing to rule on internal Senate procedures, a ruling that appears to violate the separation of powers mandated by the Founding Fathers.

On Friday, Frist along with Senate Judiciary Chairman Orrin Hatch (R-Utah) and several other Republican lawmakers introduced a resolution to amend Rule XXII of the Senate rules, which requires 60 votes to end debate on the Senate floor.

Frist said the proposal to change the Senate rules either formally or by a ruling of the chair has: "engendered a lot of debate, discussion as I come back today."

Under the formal proposal Frist submitted to the Rules panel, 60 votes would be required on only the first effort to break a filibuster on judicial nominees. After that, the requirement for cloture would drop to 57 votes, then 54 votes, and finally a majority of senators present and voting.

If Republicans change the rules by a so-called nuclear option, Democrats vow they will bring the chamber to a standstill. Senate rules give the minority party a cornucopia of parliamentary maneuvers to extend debate indefinitely.

When Sen. Arlen Specter (R-Pa.) discussed the possibility of limiting filibusters at an executive session of the Judiciary Committee last week, another panel member, Sen. Chuck Schumer (D-N.Y.), warned that such a move would have a lot of "fallout," said an aide who attended.

Republicans could respond in turn by seeking a ruling from the chair - and then sustaining that ruling by a simple majority vote - that Democratic retaliatory tactics were also impermissible.

This would severely erode the power of the minority and dramatically change the nature of doing business in the Senate. But some Republicans who are fed up with what they call Democratic obstructionism say that may not be such a bad thing.

Frist said Tuesday that "allowing partisan filibusters [of judges] to

become part of the institution" is unacceptable.

Several other Republican senators said they believe Frist would flex the power of the majority if Democrats didn't back down. They also hinted they are inclined to support the controversial tactic.

"It's amazing how fast things cool off around here, but I'm not optimistic this is going to be finessed," said Sen. Jeff Sessions (R-Ala.), when asked if he thought Frist would resort to the "nuclear" option.

"This is a big deal," Sessions emphasized. "I'm not going to sit by and cede this power to the minority, the power to select judges," he added.

Sen. Gordon Smith (R-Ore.) echoed similar sentiments.

"It's under serious consideration," Smith said. "There is a very real case that can be made that judges were not meant to be confirmed by a supermajority and we really are changing the balance of power so maybe it has to come to that. Maybe we need that fight for the greater need of the country."

Senate Rules Committee Chairman Trent Lott (R-Miss.) pointed out that "The Senate hasn't been reformed in any significant way in many, many years."

Lott said Tuesday he would "probably have a hearing on the Hatch-Frist proposal June 5."

David Carle, spokesman for Sen. Patrick Leahy of Vermont, the ranking Democrat on the Judiciary panel, said it would be more likely that Democrats would filibuster that proposal rather than let it pass by a simple majority.

If the traditional route failed, Republicans could try the more controversial option. In fact, 25 years ago Democrats set a precedent for such a bold move.

In 1977 then-Majority Leader Robert Byrd (D-W.Va.) used this tactic to kill the ability of senators to stage post-cloture filibusters, delays that involve the extensive use of roll calls and quorum calls after cloture is invoked.

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The Hill - 5/14/03

GOP splits over tough tactics on Bush judges

By [Alexander Bolton](#)

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