

**AMERICAN RIVERS
CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW
COMMUNITY RIGHTS COUNSEL
DEFENDERS OF WILDLIFE
EARTHJUSTICE
EARTHWORKS
ENVIRONMENTAL WORKING GROUP
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NATIONAL ENVIRONMENTAL TRUST
NATIONAL TRIBAL ENVIRONMENTAL COUNCIL
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NATURAL RESOURCES DEFENSE COUNCIL
THE OCEAN CONSERVANCY
PHYSICIANS FOR SOCIAL RESPONSIBILITY
SIERRA CLUB
U.S. PUBLIC INTEREST RESEARCH GROUP
THE WILDERNESS SOCIETY**

April 28, 2005

Re: Please oppose the “nuclear option” to change the filibuster rule for judicial nominees

Dear Senator:

Senate Majority Leader Bill Frist (R-TN) is threatening to circumvent long-standing Senate rules in order to eliminate the ability of 41 or more senators to filibuster any current or future nominee for a lifetime federal judgeship. We strongly urge you to oppose this effort.

Safeguarding our nation’s citizens from air and water pollution, as well as protecting our fish and wildlife and National Parks, forests and other wildlands for future generations, depends on fair and independent federal judges. Americans rely on the Senate to deny lifetime judicial seats to nominees who would place ideology ahead of the fair interpretation of our nation’s statutes and the U.S. Constitution.

Long-standing Senate rules permit filibusters of judicial nominees and require a two-thirds majority of the Senate to approve rule changes. Senator Frist’s plan, termed the “nuclear option” by Senator Trent Lott (R-MS), would employ a procedural trick to allow a simple majority of senators to change the Senate rule that governs cloture on Senate filibusters. The filibuster rule has never before been changed in such a manner.

Article I, Section 5 of the Constitution states that “[e]ach House [of Congress] may determine the Rules of its Proceedings.” The Appointments Clause authorizes judicial and executive branch nominations, stating that the President “by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States.” Art. II, sec. 2.

The Rules Clause and the Appointments Clause have provided the basis for the successful filibusters of Abe Fortas’ nomination to Chief Justice of the United States in 1968; Sam Brown’s nomination to Ambassador in 1994; and the nomination of Henry Foster to be

Surgeon General in 1995. Many of those who are now claiming that filibusters of judicial nominees are unconstitutional voted to filibuster the latter two nominations, even though the rules permitting those filibusters were founded on the same provisions of the Rules and Appointments Clauses.

Invoking the nuclear option would poke a thumb in the eye of those who have called for greater bipartisanship in Congress. There are important issues facing the nation today, and bypassing Senate Rules to eliminate the judicial-nominations filibuster would make it far more difficult to address those issues.

There are no compelling reasons for changing the filibuster rule. The number of confirmed lifetime federal judgeships is higher than it has been in more than a decade, and with 207 confirmed lifetime judges and a 95% confirmation rate, President Bush has been extraordinarily successful in his efforts to place judges on our courts.

On behalf of our millions of members, we strongly urge you to reject the nuclear option.

Sincerely,

Rebecca R. Wodder
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American Rivers

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