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Article

Senators End Filibuster on Owen, 81-18

By Brent Kendall

One day after a last-minute bipartisan agreement enabled the Senate to avoid a monumental fight on President Bush's judicial nominees, senators on Tuesday voted to end the filibuster of Texas Supreme Court Justice Priscilla Owen, whose nomination to the 5th U.S. Circuit Court of Appeals had been blocked by Democrats who called her too extreme for the federal bench.

The 81-18 vote cleared the way for a final yes-or-no vote on her confirmation, which could occur today.

Senators ended the Owen filibuster as a result of a Monday evening compromise signed by seven Democrats and seven Republicans that also cleared the way for an end to the filibusters of California Supreme Court Justice Janice Rogers Brown, a nominee for the U.S. Court of Appeals for the District of Columbia Circuit, and 11th Circuit nominee William H. Pryor.

More Debate

Senate Majority Leader Bill Frist, R-Tenn., said that lawmakers could vote to end the Brown and Pryor filibusters this week.

His counterpart, Senate Minority Leader Harry Reid, D-Nev., suggested that Democrats might want more time to debate the nominations before allowing them to come to the floor for final votes.

The Democratic signatories to the compromise agreed to allow votes on the three nominees in exchange for a Republican promise not to support the so-called nuclear option, a parliamentary tactic threatened by the GOP that would have outlawed filibusters of judicial nominations.

The agreement lasts through the end of the current Congress in 2006. Republican leaders had been prepared to force a vote on the nuclear option Tuesday.

Sixty Votes

The Democrats also agreed to language stating that nominees should be filibustered only "under extraordinary circumstances," though the agreement left it to each senator's discretion to decide when such circumstances exist.

The 14 senators called on President Bush to consult with Democrats and Republicans before submitting future nominees for Senate consideration.

Neither Frist nor Reid, nor any other members of the parties' leadership, was a signatory to the agreement.

Republicans enjoy a 55-45 majority in the 100-member Senate but had not been able to garner the 60 votes necessary to end the filibusters on Owen and other Bush nominees.

The compromise was the talk of Capitol Hill Tuesday, with lawmakers and interest groups passing judgment on the deal and speculating about its potential impact on the often-contentious judicial nominations process - and an eventual Supreme Court vacancy.

Frist said the agreement should make it "almost impossible" for Democrats to filibuster, or indefinitely delay, future nominees, including those to the Supreme Court.

The majority leader, however, said he was concerned about the "extraordinary circumstances" language. Republicans, he said, would have to "wait and see" how Democrats interpreted it.

Frist added that the nuclear option, called the constitutional option by GOP leaders, "remains on the table."

Reid bristled at Frist's statement.

"I'm disappointed that there are still these threats," Reid said. "The nuclear option is gone."

He said there could be filibusters on future judicial nominees, just as there would be filibusters on future pieces of legislation.

"That's what the Senate is all about," Reid said.

Sen. John Cornyn, R-Texas, criticized the agreement, saying it "does not solve anything."

Cornyn said he was skeptical of how Democrats would define "extraordinary circumstances" when it came to a Supreme Court nominee.

Criticism also came from Democratic corners.

Sen. Russ Feingold, D-Wis., said that confirming Brown, Owen and Pryor "is simply a green light for the Bush administration to send more nominees who lack the judicial temperament or record to serve in these lifetime positions."

Sean Rushton, executive director of the conservative Committee for Justice, said he was "cautiously optimistic" about the agreement.

By allowing votes on the three nominees, Rushton said, Democrats were conceding that "conservative judicial philosophy is not in itself an extraordinary circumstance" that merited a filibuster.

The compromise, he said, "opens the way for Bush to nominate someone sufficiently conservative [to the Supreme Court] and get them through."

People for the American Way was one of many liberal groups who said it was important that the agreement avoided the nuclear option and preserved the filibuster.

"Saving the Senate's constitutional advice and consent role, and the checks and balances that protect judicial independence, is especially important with multiple vacancies expected on the Supreme Court," said the group's president, Ralph Neas.

Michael Gerhardt, a law professor at the College of William & Mary, said the compromise could have a significant impact on future nominations.

"These 14 senators signaled that they felt the only way to change the climate was to do this," Gerhardt said. "They're challenging everybody else to rise up to the same level."

But he said that a Supreme Court nomination would "likely put a strain" on the agreement.

"I think President Bush will make a bold choice," Gerhardt said. "I think Bush will choose a nominee that gives him exactly what he wants."

Still, the senators' call for more consultation from the White House, he said, "signals to Bush that he can't ignore them."

Republicans and Democrats have been frustrated by the lack of consultation by the Bush administration, Gerhardt said.

"I think [the agreement] opens the door for a better relationship - if the president wants a better relationship," said Glenn Sugameli, senior legislative counsel for the environmental public-interest law firm Earthjustice, which has opposed some Bush nominees.

Sugameli and other environmental advocates were pleased that William Myers III, a nominee for the 9th Circuit, was not part of the agreement.

Democrats said they will continue to block Myers as well as 6th Circuit nominee Henry Saad.

Myers, a specialist in public-land law at Holland & Hart in Boise, Idaho, has worked as a lawyer and lobbyist for the cattle and mining industries and was the top lawyer at the Interior Department from 2001 to 2003.

Myers' opponents say he has worked to undermine environmental protections and been hostile to the rights of Native Americans.

"The fact that Myers will not be allowed to be confirmed shows how important environmental protections have become to the issue of maintaining fair and independent courts," Sugameli said.

Tuesday's vote to end the Owen filibuster comes four years after Bush nominated her.

Owen's nomination was rejected by the Senate Judiciary Committee when the panel was under Democratic control, but Bush resubmitted the nomination once Republicans seized the majority.

Democrats said Owen was a conservative activist who sided with big business and was hostile to abortion rights.

Republicans countered that Owen was a well-qualified nominee who had been unfairly attacked by liberal interest groups and Democrats intent on distorting her record.

"I appreciate the fact that I'm finally going to get a vote," Owen said Tuesday during a photo opportunity with Bush in the Oval Office.

Bush said Owen was a friend and a great judge.

"These nominees have been waiting years for an up-or-down vote on the Senate floor, and now they'll get one," Bush said. "It's about time we're making some progress."