

to the American people, and that accountability will be a sufficient check on the decisions made by each of them. That was the system by which we Americans addressed nominations for more than two centuries, until the last Congress. But judicial filibusters would replace that system with one that gave the minority a filibuster-veto in the confirmation process.

Trying to legitimize their judicial filibusters, the minority took to the floor to extol the virtue of filibusters generally. And as to legislative filibusters, I agree with them. But judicial filibusters are not cut from the same cloth as legislative filibusters and must not receive similar treatment. So, I concur with the sentiments Senator Mansfield expressed during the Fortas debate:

In the past, the Senate has discussed, debated and sometimes agonized, but it has always voted on the merits. No Senator or group of Senators has ever usurped that constitutional prerogative. That unbroken tradition, in my opinion, merely reflects on the part of the Senate the distinction heretofore recognized between its constitutional responsibility to confirm or reject a nominee and its role in the enactment of new and far-reaching legislative proposals.

History demonstrates that filibusters have almost exclusively been applied against the Senate's own constitutional prerogative to initiate legislation, and not against nominations. Judicial filibusters put fundamental constitutional values in jeopardy, hallowed principles of checks and balances, the separation of powers and an independent judiciary.

Having exhausted all other alternatives and unwilling to acquiesce in the judicial filibusters, we in the Republican leadership looked for a solution. We recognized that article I, section 5 of the Constitution states that "each House may determine the Rules of its proceedings". In short, that means the Constitution gives the Senate the power to govern itself. And we proposed to draw on that power to change how the Senate ends debate on judges. We called this the constitutional option, and we built support for it.

The Senate is an evolving institution. Its rules and processes are not a straitjacket. Over time, adjustments have occurred in Senate procedure to reflect changes in Senate behavior. Tactics no longer limited by self-restraint became restricted by new rules and precedents.

In response to the tradition-shattering filibusters, we sought to create a precedent. And that precedent would guarantee that after substantial debate, each judicial nominee brought to the floor got an up or down vote.

As I said, proceeding with the constitutional option was painful to many Senators, including myself, because minority rights are deeply respected. But even longstanding rights can take new forms and become abused. And that is what happened when judicial filibusters damaged Senate traditions.

We could not permit the precedent of these filibusters to take root. To restore Senate traditions, the constitutional option became a necessary last resort.

As we moved toward a vote on the constitutional option, a compromise was reached, and important Senate traditions were restored. Filibusters were confined to "extraordinary circumstances"—an exercise of self-restraint. So some Democrats who had routinely supported the judicial filibusters began voting for cloture.

Of this I am confident: but for the constitutional option, great nominees never would have been confirmed. But for the constitutional option, judicial filibusters would have become ever more routine. And but for the constitutional option, deal brokers would have had no deal to broker.

Because we acted, the sword of the filibuster was sheathed. Highly qualified nominees who would have been blocked now sit on courts of appeals. And Samuel Alito, who was the subject of a failed filibuster, now serves on the U.S. Supreme Court.

The problem of judicial filibusters was of monumental importance. It affected the internal functioning of the Senate, the relationship between the Senate and the Presidency, and the relationship between the Senate and the courts. It was the biggest challenge I confronted as majority leader and the issue of largest consequence for our constitutional system.

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#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

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#### HONORING MARY ARNOLD

Mr. REID. Mr. President, in life we all have changes. They are so difficult to accept. In the last month or so, I have had a lot of changes in my life. One of the changes that has been so troubling for me is that we have lost a friend in the Senate. Ralph Waldo Emerson said:

Sorrow makes us all children again. [It] destroys all differences of intellect. The wisest know nothing.

The family member we have lost is Mary Arnold. She was such a wonderful, pleasant, thoughtful, kind person. Anyone would recognize her even though they wouldn't know her by name, simply because of her description—beautiful white hair, elegantly dressed every day, a wonderful smile. She never drew attention to herself, but she was so good for the institution. She sat right back here every day we were in session.

She was the best when things weren't going so well. She was here for more than two decades. She was the best when things were real tumultuous here on the floor. If somebody wanted an

easel for a chart, that was available. She directed the pages as to what they were supposed to do and not do. She always did it with such a pleasantness.

I first met Mary Arnold when her daughter worked here. She was a Republican floor person. She, like her mom, had this great, disarming smile. I was not in the city when the funeral took place and was unable to attend, but I saw in the program a picture of the deceased Mary Arnold. She looked exactly like her daughter. Exactly. She could have passed for her daughter.

She came to Washington over 40 years ago. Born in the late 1930s in Jonesboro, Arkansas, she attended Memphis State University. She worked as a flight attendant—a stewardess, as they used to be called. All the stewards and stewardesses are very attractive people, but in the old days that was a requirement. Stewardesses had to look real good; Mary Arnold looked real good. I am sure she was a great flight attendant, a stewardess.

She worked for a number of Members of Congress, including Congressman Harvey of Indiana and Representative Zion. She worked for the Sergeant at Arms, of course.

She was a wonderful person. I had conversations with her. She loved animals, especially the ugly little dogs people fall in love with, Boston terriers. She was in love with her Boston terriers. She was a wonderful person. Coming to the Senate today and not having Mary back there is a tremendous loss to me and to the Senate. I want her wonderful daughter Mary Elizabeth to know she will be missed. Her spirit is something all in the Senate should have a little bit of. My thoughts are with Mary wherever she might be and my love and respect for her family is paramount as a result of the wonderful person she was.

Mr. FRIST. Mr. President, as the Democratic leader has so eloquently described, it is hard to imagine the smiles and the charm of Mary Miller Arnold will no longer grace the Senate.

I have had the opportunity to talk to her daughter Mary Elizabeth several times since her mom's demise. The love and the respect, that bond a mother and a daughter together share, is magnificent; it sparkles so much in her voice today.

Mary was a fellow Tennessean. She will be remembered most for her uncanny ability to very efficiently enforce the Senate rules at this door, without sacrificing at any point in time her unfailing, consistent professionalism, her dedication, her polite demeanor.

The Senate simply could not function, we all know, without our staff and committed staff. We 100 Senators are, for the most part, the face of the Senate, but it is people such as Mary who are here, day after day, the cogs in the wheels behind it, who keep this Senate moving along, keep it ticking.

She was the pulse of the Senate, in many ways. To Mary's friends and to