

## The Nuclear Option: Misplaced Conservative Outrage

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### The Nuclear Option: Misplaced Conservative Outrage

By Lester Jackson, Ph.D.

*The filibuster has not prevented tyranny. Few understand this better than crime victims, who know that the filibuster never stopped the appointment of judicial tyrants whose notion of "justice" is to torture victims for the benefit of violent criminals. The war against victims is but one example of pervasive tyranny. Others include quotas, and the assault s on religion, property and health care. Republicans have failed tragically to meaningfully oppose tyranny, and often have enabled it. If RINOs are not replaced by a genuine opposition party, nothing can save the Constitution – or the representative democracy and freedoms that are the heritage of this country.*

"That's what I fear ... once Republicans get the majority it's very tough to ... diminish your own authority."  
--- Republican Senator [Flake](#), reacting to Nuclear Option

Harry Reid's recent imposition of the Senate "nuclear option" left many conservatives in high dudgeon over "tyranny of the majority." But the concept of majority tyranny is largely a fantasy -- contradicted, for example, by [Angelo Codevilla's](#) cogent showing, widely accepted by conservatives, that America is dominated by a [corrupt bipartisan](#) ruling class.

There is no need to elaborate upon two obvious points: the hypocrisy of those arguing [in reverse](#) in 2005; and the fallacy that tyranny by a majority of senators is necessarily tyranny of a majority of the people, sparsely and densely [populated states](#) having equal weight in the Senate.

Today's daunting tyranny is twofold: (a) authoritarian reign by largely leftist oligarchic bureaucratic, judicial and media elite minorities over what President Nixon was once ridiculed for calling the "silent majority"; and (b) illegitimate domination by powerful over powerless minorities.

Much nuclear option harrumphing has been due to this: the D.C. Circuit had [nullified a few](#) of the massive abuses of power by arrogant Obama bureaucrats. In order to accelerate such abuses, Obama and his Senate lackeys want to pack that Court with leftist ideologues, expected by liberals and conservatives alike to outvote the current judges.

Well, wake up and smell the coffee. Under old Senate rules, justices have been put on the *Supreme* Court to [rubber-stamp](#) and provide faux legitimacy to metastasizing unconstitutional, legislatively created federal bureaucratic minority tyranny since the New Deal. [In league with](#) minorities [unable to prevail](#) democratically (i.e., using persuasion, elections, and legislation), as few as five lawyers willfully and with [contempt](#) for the Constitution, exercising what Justice White called "[raw judicial power](#)," have imposed unpopular personal elitist morality upon an often overwhelming majority of the people.

Before fretting over appointment of out-of-control judges on lower courts, consider those on the highest court appointed long before the nuclear option. Thanks to them, only "favored" minorities and the ruling class have rights, crushing those of "disfavored" minorities and the majority.

Consider a few among limitless examples.

**Violent Crime.** The most depraved individuals have unwarranted protections inconceivable to a largely unsuspecting public, while law-abiding victims are treated with contempt. Many justices have such fanatic devotion to savage criminals that they callously inflict immense torture upon the victims, compounding their initial trauma. Victims were once thrown out of court completely and may again suffer that indignity, based solely on what Justice Thurgood Marshall [candidly declared](#) to be new

justices. The worst barbarians have been rewarded with a hallucinated "constitutional" right to commit [additional](#) depravity (including murders) with no punishment whatsoever. Moreover, rare capital punishment occurs only after judicial tyrants have exacted the utmost agony from publicly forgotten victimized families. This year, two multiple-murderers were [finally executed](#) for homicides [36 years](#) earlier -- a period far longer than many victims live, and during which loved ones must needlessly endure the excruciating torment of repeatedly reliving their worst nightmares.

**Discrimination.** In 1954, [beseeched](#) (40) by [professed opponents](#) (26) of discrimination, the Supreme Court unanimously accepted the first Justice Harlan's solo 58-year-old dissent declaring that the 14th Amendment [mandated a color-blind society](#). (Although the 1954 decision did not use the term "color-blind," it was [widely accepted](#) that that was its essence. Moreover, ten years later, reflecting the prevailing view at the time, the Civil Rights Act [explicitly banned](#) ethnic, religious, and sex classifications.)

After it turned out that those complaining about discrimination really were disturbed only that *they* were not doing the discriminating, the Court again pivoted, holding it constitutional to discriminate after all -- against Caucasians, Asians, and men. Indeed, some justices overtly distinguish between good ("benign") discrimination (against "disfavored" whites, Asians and men) and bad ("malign") (against "preferred" groups). Justice Thomas [denounced](#) the distinction as "noxious ... poisonous and pernicious," turning on "whose ox is gored." This established the very quotas guaranteed to be prohibited by sponsors of specific 1964 Civil Rights Act language to this end. The resulting Orwellian state of affairs is that true discrimination opponents are pilloried, with decades of high court approval, as racists and sexists by advocates of a spoils system based on race and sex classifications supposedly prohibited by both the Constitution and the Civil Rights Act -- a system so [corrupt](#) that rabid leftist Elizabeth Warren successfully [falsified](#) her ethnic heritage to advance her path to the U.S. Senate.

**War Against the Religious.** "We are a religious people[.]" the Court once [acknowledged](#). Nevertheless, for more than 60 years, tiny "offended" minorities and lone individuals, aided by justices, often no more than five lawyers out of a population of 200-300 million, have subverted the First Amendment guarantee of "free exercise" of religion. Thus, Justice Kennedy, on behalf of four justices, [accused](#) five justices of "an unjustified hostility toward religion[.]" Portraying justices' unpredictable, detailed religion regulations as "[some ghoul](#) in a late-night horror movie," Justice Scalia wrote a [dissent](#) that would be hilarious if it did not reveal how a minuscule minority exercises tyranny over both other minorities and the majority as well. Frequent [hair-splitting](#) occurs, as usually divided justices idiosyncratically give [thumbs up](#) and [thumbs down](#) to various religious displays.

**Property Rights.** Chief Justice Rehnquist objected to property rights being "[relegated](#) to the status of a poor relation." Starting with [Wickard v. Filburn](#) (penalizing a farmer for growing wheat on his own farm for his own use) and culminating in the infamous 5-4 ObamaCare rationalization, limits on federal power, on matters approved by five elite lawyers, have been virtually [eliminated](#) by abusing the Constitution's [commerce](#) and [tax](#) powers, as well as the [due process and equal protection](#) clauses. Under one notorious fiat, the property of no person lacking influence is safe from corrupt government officials seeking to transfer **that** property to the powerful. As Justice O'Connor [dissented](#) (13) in *Kelo v. New London*: "The beneficiaries are likely to [have] disproportionate influence and power ... [T]he government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this *perverse result*." [Emphasis added.]

But when it comes to perversity, nothing can top...

**ObamaCare.** After being publicly threatened by President Obama and Senate Judiciary Committee Chairman Leahy, Chief Justice Roberts had the effrontery to [blame the voters](#) in justifying his [thoroughly disingenuous](#) cave-in upholding this law, now inflicting hardships on growing millions of Americans. Nevertheless, there can be no better illustration of tyranny of a corrupt willful minority than this "act of [government mayhem](#)." Neither Senator Obama nor a muzzled Speaker Pelosi campaigned

for this in 2008; Mitt Romney largely ignored it in 2012. Once unleashed, Pelosi famously declared that the [2,400-page](#) legislation had to be enacted to find out what was in it (bureaucratic license to excrete [11,000 pages](#) of authoritarian regulations, many unfathomable). Is there anyone so deluded by ideology or partisanship as to *believe* that anywhere near a majority of the people ever sought or approved this monstrosity? Indeed, when ObamaCare was a major issue, in 2010, Republicans decisively captured the House.

The only reason for continuation of this unpopular disaster is tyranny. And this is **not** tyranny of the majority, but of the ruling class -- executive, legislative, judicial and media. According to Dick Arme, when leftist ideologue George Miller was told most people did not want a prior ObamaCare version, the latter [replied](#) that they were going to get it "whether they want it or not." Rep. Miller claims to not remember, but this is exactly what happened!

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Let's not delude ourselves. The filibuster has prevented a few bad Senate actions (and many good ones). However, it has not protected the people against ever-increasing federal power -- power abused with reckless abandon well before abuse on steroids by Obama.

Thus, it would be highly ill-advised to so exalt the filibuster that purportedly outraged Republicans attempt to restore it. An ominous reaction to the nuclear option came from *Republican* Senator [Flake](#): "That's what I fear. I fear that once Republicans get the majority, it's very tough to tell the base that you're going to diminish your own authority." (Flake is an [ObamaCare enabler](#).) Can anything better show what's wrong with RINOs? This man not only cowers at exercising his existing power, but he fears that he might not be able to reduce it!

Many of today's worst problems are due not just to aggressive leftist Democrats who will stop at nothing, but also to timid RINOs who stand for nothing. Although Senator Flake fears that a Republican majority will not restore the filibuster, what the rest of us should fear is the fear of the likes of Senator Flake.

It is galling that John Boehner became speaker in 2011, because Tea Party Republicans campaigned on a promise to avert the current ObamaCare disaster. In January 2011, Obama had not yet been re-elected, and the House Republican mandate was at its pinnacle. All Republicans had to do was not vote for money to implement ObamaCare. It is [absolutely absurd](#) to say that this required approval of the president or the Senate. The [Constitution is crystal-clear](#): if the House refuses to vote for appropriations, there is nothing anybody else can do about it except scream to high heaven, much as Republicans have done over the nuclear option. (Democrats do not care who screams and how loud; RINOs quake at the very prospect.)

Future historians will have ample reason to conclude that the great tragedy of the Obama dictatorship was not the demise of the filibuster, but that, at a critical historical moment and on one of the most destructive laws ever enacted, House leaders blocked fulfillment of the very promise that made them leaders.

As for filibustering to block judges who would legitimize further unconstitutional abuse of power, never forget Chief Justice Roberts. Those who revere the Constitution and were [shocked](#) by ObamaCare's intimidated savior should remember this: reliance on judges is gambling. Heed Judge Learned Hand's [warning](#) that we "rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes."

Above all, remember that President Obama is able to abuse power only because the RINO-led House timidly refuses to constitutionally block money for such abuse. If RINOs are not replaced, and if a genuine opposition party is not established, nothing can save the Constitution -- or the representative democracy and freedoms that are the heritage of this country.

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*\*Original slightly modified.*

**Lester Jackson, Ph.D., a former college political science teacher, views mainstream [media suppression](#) of the truth as essential to harmful judicial activism. His recent articles are collected [here](#).**