

Mr. FRIST. I would be pleased to help clarify this issue.

Mr. LEVIN. Section 5 of the original version of the Martinez bill conferred jurisdiction on a Federal court to hear a case like this, and then stated that the Federal court "shall" issue a stay of State court proceedings pending determination of the Federal case. I was opposed to that provision because I believe Congress should not mandate that a Federal judge issue a stay. Under longstanding law and practice, the decision to issue a stay is a matter of discretion for the Federal judge based on the facts of the case. The majority leader and the other bill sponsors accepted my suggestion that the word "shall" in section 5 be changed to "may."

The version of the bill we are now considering strikes section 5 altogether. Although nothing in the text of the new bill mandates a stay, the omission of this section, which in the earlier Senate-passed bill made a stay permissive, might be read to mean that Congress intends to mandate a stay. I believe that reading is incorrect. The absence of any state provision in the new bill simply means that Congress relies on current law. Under current law, a judge may decide whether or not a stay is appropriate.

Does the majority leader share my understanding of the bill?

Mr. FRIST. I share the understanding of the Senator from Michigan, as does the junior Senator from Florida who is the chief sponsor of this bill. Nothing in the current bill or its legislative history mandates a stay. I would assume, however, the Federal court would grant a stay based on the facts of this case because Mrs. Schiavo would need to be alive in order for the court to make its determination. Nevertheless, this bill does not change current law under which a stay is discretionary.

Mr. LEVIN. In light of that assurance, I do not object to the unanimous consent agreement under which the bill will be considered by the Senate. I do not make the same assumption as the majority leader makes about what a Federal court will do. Because the discretion of the Federal court is left unrestricted in this bill, I will not exercise my right to block its consideration.

Mr. WARNER. Mr. President, the tenth amendment to the U.S. Constitution provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

This is a principle of Federalism which, I believe, is not being followed by Congress in enacting this legislation.

That the misfortunes of life vested upon Theresa Marie Schiavo are a human tragedy, no one can deny. I said my prayers, as did many Americans, as we attended religious services this Palm Sunday.

I believe it unwise for the Congress to take from the State of Florida its constitutional responsibility to resolve the issues in this case.

The Florida State court system has adjudicated the issues to date. This bill, in effect, challenges the integrity and capabilities of the State courts in Florida.

That the Federal system of courts can move properly and fairly adjudicate the equities among the diverse parties in this particular case is a conclusion with which I cannot agree.

Greater wisdom is not always reposed in the branches of the Federal Government.

Apart from constitutional issues, I am concerned for the institution of the Senate, a body in which I have been privileged to serve for over a quarter of a century.

I view service in the Senate as that of a trustee—preserve this venerable body, its traditions and time-tested precedents, for future generations. It is one of a kind in their troubled world.

The drafters of this bill endeavored to write in provisions to prevent this unique law—a private relief bill is the term used in our procedures—from becoming a "precedent for future legislation" (section 7).

I do not believe the legislation can, or will, block further petitions from our citizens. Who can say there are not other tragic situations across our land today; who can predict what the future may inflict by way of personal hardship upon our citizens?

I fear the door has opened and Congress, which by constitutional mandate is entrusted to pass laws for the Nation, will again and again be petitioned to deal with personal situations which are the responsibility of the several States.

I respect the views of those who drafted and moved this bill swiftly, with limited debate, through the Senate. I value the sanctity of life no less fervently than they, for I had the great fortune of being the son of a doctor who devoted his entire life to healing and caring for the sick and injured. My father's principles have been my compass for my life.

It is not easy to be in opposition to this legislation, but I have a duty to state my views in keeping with my oath to support the Constitution as I interpret it.

IN DEFENSE OF SENATE TRADITION

Mr. BYRD. Mr. President, opponents of free speech and debate claim that, during my tenure as majority leader in the United States Senate, I established precedents that now justify a proposal for a misguided attempt to end debate on a judicial nomination by a simple majority vote, rather than by a three-fifths vote of all Senators duly chosen and sworn as required by paragraph two of Senate rule XXII. Their claims are false.

Proponents of the so-called nuclear option cite several instances in which they inaccurately allege that I "blazed a procedural path" toward an inappropriate change in Senate rules. They are dead wrong. Dead wrong. They draw analogies where none exist and create cock-eyed comparisons that fail to withstand even the slightest intellectual scrutiny.

Simply put, no action of mine ever denied a minority of the Senate a right to full debate on the final disposition of a measure or matter pending before the Senate. Not in 1977, not in 1979, not in 1980, or in 1987—the dates cited by critics as grounds for the nuclear op-

tion. The Congressional Research Service confirms that only six amendments have been adopted since the cloture rule was enacted in 1917, and "each of these changes was made within the framework of the existing or 'entrenched' rules of the Senate, including rule XXII."

In none of the instances cited by those who threaten to invoke the nuclear option did my participation in any action deny the minority in the Senate, regardless of party, its right to debate the real matter at hand.

Let us examine each of these so-called precedents in greater detail.

October 3, 1977—Enforcing Senate Rule XXII Against Improper Post-Cloture Delay: In 1977, the Senate invoked cloture on S. 2104, described as "a bill to establish a comprehensive natural gas policy." Shortly thereafter, two Senators began a postcloture "filibuster by amendment," after a supermajority of the Senate had already chosen to invoke cloture (under the Senate rules) and had made clear its desire to bring debate on the bill to close. Though the Senate had voted to invoke cloture by an overwhelming vote of 77 to 17, two Senators nonetheless continued to offer amendments, to request quorum calls, and to offer amendments to amendments to preserve and extend time on the bill post-cloture. Their efforts, as confirmed by the Chair, ran directly contrary to the purpose of rule XXII, which is to limit debate.

The tactics employed were sufficiently egregious that the Senate spent 13 days and 1 night debating the bill, which included 121 rollcalls and 34 live quorums. Cloture having been invoked by an overwhelming vote, I then made the point of order that:

when the Senate is operating under cloture, the Chair is required to take the initiative under rule XXII to rule out of order all amendments which are dilatory or which on their face are out of order.

Critics have alleged that my actions in this instance "cut off debate" and somehow constitute a precedent for ending a filibuster of a judicial nominee by 51 votes before cloture has been invoked. But that argument is erroneous.

The Senate was operating postcloture. The Senate had voted 77 to 17 to end debate. I didn't do that; the Senate took that action.

If anything, my actions clarified that rule XXII means what it says. The text of rule XXII provides explicitly that, once cloture is invoked, "no dilatory motion, or dilatory amendment, or amendment not germane shall be in order." Therefore, once Members have voted to invoke cloture, dilatory amendments or actions are simply out of order. Senators still retain their hour of postcloture debate. Senators still have the right of appeal.

Some have falsely alleged that I even acted to impede debate on that appeal,