



"The only no-compromise gun lobby in Washington"
-Rep. Ron Paul (R-TX)

MEMORANDUM

April 3, 2019

TO: Senate Republican Staff

FROM: Michael Hammond, Legislative Counsel for GOA

RE: Invoking the Nuclear Option is a Huge Mistake

WHO I AM: I've been a legislative advisor in Washington for 44 years, and am currently Legislative Counsel to Gun Owners of America. Twelve of those years, I was General Counsel to the U.S. Senate Steering Committee, where my job was to advise the conservative half of the Republican Party in the Senate with respect to comprehensive (and small) issues of legislative strategy. I founded the Conservative Working Group (CWG).

I know what it's like to have a Democratic Senate, a Democratic House, and a Democratic president -- and only the Senate rules stand in the way of the enactment of the Democrats' entire socialist agenda. And I predict that, if the Republicans persist in trying to destroy their rules, we will reach that point again -- probably sooner rather than later. And there will be absolutely nothing standing in the way of AOC's comprehensive socialist agenda.

WHY IS THE GUN LOBBY INTERESTED IN THIS? Sometimes over the objection of Establishment Republicans in the Senate, the gun lobby succeeded in stopping every gun control proposal pushed after Columbine and Newtown. Had we not succeeded in this, the Second Amendment would be in tatters. We stopped semi-auto bans, magazine bans, universal background checks/gun registries, 18-20-year-old gun bans. And in every case, we did this in the Senate -- and we did this with the filibuster. Without the filibuster, the entire anti-gun agenda will quickly pass. And what Republicans are thinking of doing would destroy the legislative filibuster -- again, probably sooner rather than later.

WHAT IS THE "NUCLEAR OPTION"? Essentially, the "nuclear option" is a fraud scheme. Senators vote that the Senate rules provide such-and-such, when that is transparently, factually a lie. In

any other area of endeavor, people who did something like this would be prosecuted for fraud.

ISN'T THERE A DIFFERENCE BETWEEN LEGISLATIVE AND EXECUTIVE FILIBUSTERS? Technically, but it's important to make two points:

First, a "nuke" of the legislative filibuster has already been attempted in this battle, so that distinction has largely dissolved. When the Chair stumbled over these words "Three fifths of the Senate duly chosen and sworn not having voted in the affirmative, the motion is not agreed to," THAT WAS THE NUCLEAR OPTION -- although an unsuccessful invocation of it. Rule XXII requires 2/3 of those present and voting to change the rules, and when the Chair proposes to rule that cloture would have been invoked, even though that standard was not met, that is "the nuclear option" -- and it is the "nuclear option" being applied to shut down a LEGISLATIVE filibuster.

Second, assuming the leadership attempts to invoke the "nuclear option" in some exotic way during executive session, it would be a mistake to assume this will have no impact on the legislative filibuster. Senators who regularize the use of "cheating" in order to get their way in the Senate have no ability to set limits on others proposing to use the same sort of "cheat scheme." Harry Reid tried to do this in November, 2013, when he tried to "nuke" nominations -- but to exempt Supreme Court nominations. He soon found out, to his dismay, that you can't say "It's alright to cheat, but only in the ways that I cheat." Just as the invocation of the "nuclear option" in 2013 eliminated the filibuster of Supreme Court nominees -- while claiming not to -- the invocation of the "nuclear option" now will eliminate the legislative filibuster, despite what its proponents argue.

ISN'T THE "NUCLEAR OPTION" NECESSARY TO STOP THE DEMOCRATS' ABUSE OF THE SENATE RULES? No. After cloture, each senator has only one hour of debate time. And, if there ever comes a time when no senator seeks recognition, the Chair should put the question to the Senate. Senators need to enforce the current rules, rather than obliterate them.

ISN'T THIS STRATEGY THWARTED BY THE FACT THAT DEMOCRATS PUT IN A QUORUM CALL WHEN THEY FINISH SPEAKING? No. Any senator can ask unanimous consent to call off the call and then state, "If there are no other senators seeking recognition, I ask that the Chair put the question." Furthermore, the Chair can "eyeball" a quorum.

WON'T THE DEMOCRATS ABOLISH THE FILIBUSTER ANYWAY WHEN THEY COME INTO POWER? Not necessarily. Fortunately, there are always institutionalists on either side who will put the institution

above the exigencies of the moment. You don't shoot yourself in the head because of the possibility that someone will do it for you sometime in the future.

WON'T A ROBUST CONSERVATIVE JUDICIARY SAVE US FROM THE SOCIALIST AGENDA WHICH THE SENATE WILL "NUKE" INTO LAW?

Gun Owners of America is currently fighting patently unconstitutional unlawful regulations that ban both bump stocks and, implicitly, AR-15's. We have a Republican-appointed district judge, the most Republican circuit in the country, and a supposedly "pro-gun" Supreme Court. The "Ivy League wonders" at all levels have thus far failed to protect the Second Amendment. The Supreme Court, in particular, was a huge disappointment in its failure to support Second Amendment principles.

SUMMARY: So, before the Senate does something it cannot un-do, I would ask that it take a step back and consider the magnitude of what it is proposing. After Republicans pushed (unnecessarily) to invoke the "nuclear option" in 2005, Democrats took control a year later. Within four years, Democrats controlled the House, the Senate, and the White House.

And commentators like Paul Weyrich were "thank[ing] their lucky stars" that the "nuclear option" had not been invoked.

Harry Reid actually invoked the option in 2013 and lived to regret it. His legacy will be that a venal man who foolishly put the exigencies of the moment above the good of the institution and was crushed by eventualities he was too stupid to foresee.

Those who commit fraud for short-term advantage usually live to see their dishonest acts used against them.