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The Political Seduction of the Law: Mr. Estrada Withdraws

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Democrats, under pressure from abortion rights zealots in their political base, demanded that Mr. Estrada reveal how he would judge in cases dealing with abortion, homosexuality, and other issues. Standing on principle, Mr. Estrada refused. Under the leadership of Sen. Ted Kennedy [D-MA], Senate Democrats, though only a minority in the Senate, blocked the nomination from ever coming to the floor. [\[see New York Times coverage\]](#)

The Constitution requires only a majority vote for a judicial confirmation. That's not good enough for the liberal Democratic senators, who are determined to keep Miguel Estrada and similar judges out of the nation's courtrooms. By use of the filibuster, the minority can require the majority to come up with sixty votes needed to overcome their procedural blockage.

Pro-abortion groups like NOW [National Organization for Women] quickly took to the media to crow about their victory. "Miguel Estrada did the right thing," said NOW president Kim Gandy. Of course, she engaged in a little name-calling, describing Estrada as a "controversial nominee" whose "extremist views" have no place in the judiciary.

But NOW and other pro-abortion groups are the real extremists, opposing even laws against partial-birth abortions. Estrada is in the mainstream of American jurisprudence, having served in the Department of Justice in both the Clinton and Bush administrations. A graduate of Columbia University and Harvard Law School, Estrada is an immigrant from Honduras. His only fault was that he refused to assure these liberal senators that he would decide cases in their favor.

Mr. Estrada wrote the President asking to be relieved of his nomination. Two long years of waiting and fighting were enough. "I believe that the time has come," he wrote, "to return my full attention to the practice of law and to regain the ability to make long-term plans for my family." Who can blame him?

President Bush released a statement that reflected his frustration: "Despite his superb qualifications and the wide bipartisan support for his nomination, these Democratic senators repeatedly blocked and up-or-down vote that would have led to Mr. Estrada's confirmation. The treatment of this fine man is an unfortunate chapter in the Senate's history."

Writing just a few years after his lost battle for confirmation to the Supreme Court, Judge Robert Bork wrote: "The liberal elites will not be satisfied with blocking the nomination of judges who may be expected to adhere to the historic principles of the Constitution. They intend to root out that idea of the intellectual life of the law, to make the philosophy of original understanding, and the associated idea of political neutrality in judging, disqualifying for the men and women

who hold them.”

His prophetic words have come true. Senators like Ted Kennedy now demand that the nominee provide details about positions on abortion, stem cell research, and similarly controversial issues. It is not enough that the nominee agrees to rule by the law and honor the language and intention of the Constitution. The nominee must also worship at the altar of abortion on demand and moral relativism. Neutrality before the law, once regarded as the hallmark of judicial integrity and distinction, is now a disqualification. Only liberals need apply.

Judge Bork warned of “the political seduction of the law” as liberal senators demanded that judicial nominees respond at confirmation hearings with the politically correct positions cherished by the political left. The reason for this should be obvious. The outrageous decisions handed down by federal courts on issues like abortion are based in a political argument—not in the Constitution itself. There is no better example of this than the infamous *Roe v. Wade* decision legalizing abortion. The Court did not come to this decision by investigating the actual words of the Constitution and the intention of its framers. To the contrary, the Court simply invented a new right and declared it to be the law of the land.

A judicial nominee committed to the rule of law and to constitutional interpretation based in the actual words and original intention of the founders has no chance of confirmation to the bench. At least, not as long as a minority of liberal senators holds the power to filibuster the nomination. These senators are fanatically determined to protect their political victories won in the federal courts. Of course, political victories are supposed to be won in the legislature. But the liberals have never been satisfied with the legislative process, because they lose too many legislative battles. Instead, they leapfrog over the political process and take their case to the courts, where revisionist judges stand ready to legislate from the bench. That is why judicial nominees like Robert Bork and Miguel Estrada are such a threat. They would go to the courts to adjudicate—not to legislate.

Mr. Estrada’s withdrawal, understandable as it is, robs this nation of a fine judge and public servant. We cannot afford to lose jurists of his caliber. We dare not miss the lessons of his defeat.

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