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Republicans flex muscles at taxpayers' expense

By Ed Meyer

Brian Lockhart did a fine job in reporting what is a basic issue of democracy in Connecticut; that is, the tyranny of the Republican minority in the Connecticut General Assembly to delay or outright kill good legislation intended to benefit the people of this state ("Limiting Speeches On Bills Is A Concern For State Legislators," June 6.)

Mr. Lockhart uses as an example the Senate Republican filibuster of Senate Bill 1048, which requires the state to plan for the purchase of prescription drugs in bulk for its various state-sponsored health plans. Connecticut is one of only nine states in the nation that don't use such bulk purchasing. Two states with very similar populations to ours - Iowa and Oregon - have had such bulk purchasing plans in place for years. Iowa has saved $36 million in state taxpayer dollars since January 2005, and is on track to cut the cost of its Medicaid drug budget by 36 percent this year. Oregon and Washington have saved a combined $12.7 million in their prescription drug costs (about 15 percent) in the past 23 months.

It seems that in these difficult economic times, Republicans would want Connecticut to achieve similar budgetary savings. When SB 1048 was first debated in the Senate on May 27, the conversation lasted only 28 minutes, including debate on three amendments. The debate on the basic, underlying bill was only 13 minutes long, with questions from just one Republican senator. On a roll-call vote, SB 1048 was unanimously approved on a bipartisan 36-0 vote.

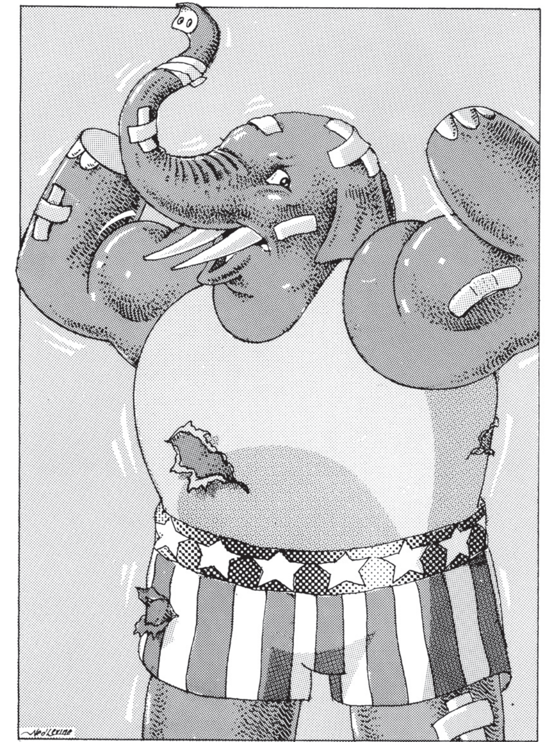
Five days later, the House amended SB 1048 and approved it overwhelmingly, 129-17 (21 Republicans voted for the bill, 16 against.) Since it was amended, the bill had to return to the Senate for re-consideration.

Final debate on SB 1048 began around 3:15 p.m. on the last day of session, Wednesday, June 3. You would think that a bill that had been unanimously approved in the Senate just one week earlier, which had received overwhelming and bipartisan support in the House, and which could easily save Connecticut taxpayers tens of millions of dollars a year in unnecessary drug costs, would have the unquestioned support of our Republican colleagues on the other side of the aisle. Instead, for the next three hours, Republican after Republican rose in the Senate to filibuster the bill by debating an unnecessary Republican amendment that would have cost the taxpayers of Connecticut $74 million in lost revenue over the next two years. In this economy!

Just after 6 p.m., Senate Majority Leader Marty Looney made the tough decision to pull the bill. Otherwise, a continued filibuster would have been the death knell for other very good, cost-saving legislation for the people of Connecticut. But just as inexplicably, SB 1048 was passed "on consent" (a unanimous, unrecorded vote) at 10:19 p.m., just four hours after those very same Senate Republicans had sought to kill it!

I am all for the close examination of complicated bills. But for some Republicans to claim (as they did in Mr. Lockhart's story) they were just trying to "flesh out" the specifics of the bill is deceptive. It was a power play by the minority, a slap in the face to Connecticut's hard-working citizens, and a risky gamble that could have cost our taxpayers dearly.

Ed Meyer is a Democratic state senator representing Guilford.



Making law on the Supreme Court is part of its function

By Kevin Baine

There is something profound, but also something superficial, about the debate that occurs every time a Supreme Court justice is nominated. The debate is profound because it probes the delicate role of an independent judiciary in a democracy. But it becomes superficial when it turns into an argument over whether judges should be making law or simply interpreting it. For a nominee, the safe answer is that the Supreme Court should interpret law, not make it. It would be refreshing, however, if the nominee acknowledged that courts, including the Supreme Court, make law all the time — and then explain how they do so.

The most basic rules and policies that govern our relations with each other were developed entirely by judges — for the most part, by state judges. These include ancient principles that are not remotely controversial — that we have an obligation to honor our contracts, and that we can be held liable for damages caused by our negligence — as well as more modern variations, such as the law of strict product liability. So never let it be said that judges do not make law or policy.

When the courts are faced with a statute or a constitutional provision, however, their job is to interpret law made by others. That is a fair statement, but not a particularly helpful one. In the landmark case of New York Times v. Sullivan, for example, the Supreme Court ruled that a public official cannot recover damages in a libel suit unless the offending statement was made with knowledge of falsity or reckless disregard for the truth. Yes, the court was interpreting the First Amendment, but the First Amendment doesn't say anything about what the law of libel should be. So was the court not "making law"? Of course it was, but appropriately so.

The controversy arises principally when the court strikes down a law enacted by Congress or a state legislature. That was what the court did in the infamous Dred Scott decision, which struck down the Missouri Compromise that prohibited slavery in parts of the Louisiana Territory. But that was also what the court did in Brown v. Board of Education, when it declared state-mandated school segregation unconstitutional. That was what the court did in Roe v. Wade, when it invalidated state laws prohibiting abortion, and this term, when it struck down the District of Columbia's gun-control law.

In today's political terms, one of these decisions could be labeled conservative, one liberal, one mainstream and one racist. What made all of them controversial was not that the court was making law but that it was REMAKING law enacted by elected representatives. The presumption in a democracy is that the majority rules, and frustration results when unelected judges set aside the majority's rules. The frustration is tempered if the court bases its decision on clear-cut constitutional rights or if the explanation resonates at some basic level even among those who are disappointed in the outcome. But clear-cut cases are rare for the Supreme Court. If the Constitution's meaning in a case is clear, the case will probably be resolved by the lower courts.

So how should a Supreme Court justice go about resolving the constitutional issues that divide the court? That is the question the Senate will be exploring with Judge Sonia Sotomayor.

The questions will focus on specific issues — whether, for example, the nominee agrees that the Constitution protects the right to choose an abortion. Concerns will be expressed, and assurances given, in familiar terms — that the nominee is or is not a judicial activist or does or does not believe the court should make law or policy. The real debate, however, will be over who gets to decide the most controversial issues of the day — elected representatives who are responsive to majority will or an independent judiciary that is (relatively) immune from public pressure.

Everyone has an opinion about abortion, same-sex marriage, gun control and affirmative action. But we should care as much about who decides these issues as we do about what decision is made. Calling something a "constitutional right" means that the court, not Congress or state legislatures, has the final word — in every sense. Legislation is by its nature tentative. It can be revoked at any time for any reason. A constitutional decision by the Supreme Court, however, is for all time. It is a statement that a principle is so fundamental that it cannot be subject to majority rule, now or ever. That is what the Supreme Court is deciding when it declares something a matter of constitutional right. It is the kind of judgment that a justice must be confident enough to make at times, but modest enough not to make too eagerly.

Kevin Baine is a First Amendment lawyer who clerked for Justice Thurgood Marshall in the 1975-76 term. His clients include The Washington Post, for which he wrote this.

I have seen the future, and it stinks

By Kevin Horrigan

I am trying to contemplate the future. It is too hard. The tube beckons.

There is the 1982 movie "Blade Runner," a "sci-fi classic," as they say in the blurbs. It is set in post-apocalyptic Los Angeles in 2019 where Harrison Ford is trying to track down four quasi-human "replicants."

The movie people imagine that in 2019, Los Angeles will be dark and horrible. Their contemplation of the future includes flying cars, "off-world" life on other planets and laboratory-created pythons for use by strippers.

However, when Harrison Ford makes a phone call in the movie, he parks his flying car near a phone booth. When news breaks, he grabs a newspaper to read about it. Here we are less than 10 years away from 2019 and you hardly ever see a phone booth. And in my business, only pie-eyed optimists believe there will be a print edition of a newspaper in 2019.

One of my brothers, owing to a misspent youth, became an art historian and a museum curator. He once "curated," as they say in the curating trade, a traveling exhibit for the Smithsonian called "Yesterday's Tomorrows," which made fun (in an intellectual sort of way) of people's goofy visions of what the future would look like: flying cars, cities in the sky, airborne buzz saws that chew up enemy airplanes, living rooms that you clean by spraying it with a hose.

It all goes to show that predicting the future is tricky. How do you conjure up transgenic pythons and miss cell phones?

Still, every day people have to make assumptions about the future based on nothing more than their own somewhat tenuous grasp of the present. On the tube, I see Tom Coburn, a Republican senator from Oklahoma, complaining about new emissions standards that Congress is imposing on automakers.

"What if you want to drive a gas hog?" Dr. Coburn asks. "You don't have the right any longer in this country to spend the money to drive a gas hog?"

Clearly Dr. Coburn is among those who cannot contemplate a future in which the pursuit of happiness cannot be achieved as fast as possible in leather seats with a V-8 engine and the A/C set to max.

Americans of my generation have a hard time contemplating a future without big cars and cheap gas, even though there is no particular reason to believe that God is making any more oil, nor that the world is going to step aside and let us suck up as much of it as we've been used to sucking up at $1.50 a gallon.

Barack Obama can see the future. He's on the tube telling me that the future is full of small, fuel-efficient gasoline-driven and plug-in electric cars that cost half again as much as a regular car, all of which will be manufactured by the new U.S. Department of the Treasury and Cars, with some assistance from the automotive industry, which apparently has seen the Light.

I have seen the Chevy Spark, of which Government Motors hopes to sell 160,000 a year. If I am to drive one, they'll have to build it around me and I'll have to wear it like a suit.

I can't imagine such a future. The car doesn't even have wings.

A young woman interrupts my contemplations. She is just back from the coffee shop, where she and her friends spend a lot of time sitting around texting other friends and occasionally engaging in face-to-conversation. "Everyone I know is scared about the future," she says. "They don't know where they're going to get jobs."

I tell her not to worry. I say the future is going to be great. I say, sure, my generation grew up in the '50s and the '60s and everything was bright and possible, unless you happened to be black. But think of the people who grew in the Depression. They probably thought everything was going to stink, too.

I do not mention that it took World War II to end the Depression. I believe young people should study history on their own.

The Internets (which "Blade Runner" also didn't mention) are full of visions of the future, which seem to fall into two broad categories: One, apocalyptic scenarios that make Harrison Ford's 2019 Los Angeles look like spring break in Cancun, and two, science will fix everything.

Under the first, by 2019 energy prices will double, even quadruple. Coastal areas will be under water. Global competition will have swallowed up all the middle-class jobs. People who grew up in an era of unlimited choices will have severely limited options.

In the second option, science is on the verge of finding an alternative to fossil fuel and everyone lives happily ever after. Option 2 will require some time, meaning that those of us who are alive today will have to get along with less so people of tomorrow can have a future.

I'm OK with that, as long as I get the flying car.

Kevin Horrigan is a columnist for the St. Louis Post-Dispatch.

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