over the debt limit is an absolutely appropriate time to talk about reforming Washington's future spending.

President Obama agreed to spending cuts the last time he asked for an increase in the debt limit. Now the President says he wants his credit limit increased without any effort to reduce future spending. And, of course, we all remember when he was a Senator he spoke out against raising the debt limit. He once called the need to increase the debt limit "a failure of leadership." But that was then. This is now.

The White House has floated gimmicks such as issuing a $1 trillion coin or using the 14th amendment to raise the debt limit without congressional approval. And now the President won't negotiate responsible spending at all. His policies—his policies of the past 4 years—have buried our children and our grandchildren under a mountain of debt. America needs real budget reform, but President Obama insists on playing politics with our country's credit rating. Hard-working American taxpayers have to balance their budgets. They understand what the President does not.

The President bragged in his press conference last week that "it's been a busy and productive 4 years, and I expect the same for the next 4 years." Well, it looks like he means we can count on 4 more years of wasteful Washington spending.

This has to stop. It is time for President Obama to finally keep his promise to get America's finances in order.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. WARREN). The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MURPHY). Without objection, it is so ordered.

EXTENSION OF MORNING BUSINESS

Mr. HARKIN. I ask unanimous consent that the period for morning business be extended until 5:30 p.m. today and that all provisions of the previous order remain in effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FILIBUSTER

Mr. HARKIN. Mr. President, I come to the floor today to give some remarks that I give about every 2 years, I guess, when the Senate reconvenes for a new Congress. Now this is a new Congress, so once again I come here to point out that we need to make some changes in the way we operate.

I have been in this body for 28 years. I am currently eighth in seniority. As soon as Senator KERRY becomes Secretary of State, I will be seventh in seniority. I am proud to represent the great State of Iowa; I am proud to be a Senator, to serve in this illustrious body. I have been in the majority and minority I think up to five times in the Senate. Before that, I served 10 years in the House. I love the Senate. It is a wonderful institution—it is, as envisioned by our Founders.

The Senate at times has been frustratingly slow to encompass the changes necessary to the smooth functioning of our country. I mention in particular the long, long struggle for civil rights and how that was held up by a small minority—which happened to be in my party, by the way, at that time.

Nonetheless, the Senate through the years has really been the Chamber that takes a long and hard look at legislation, where we have the right to amend, where we have the right to discuss and to embark upon discourse on legislation in a manner that allows even the smallest State to be represented as much as a large State. That is not true in the body that both the occupant of the chair and I used to serve in, the House. There, as you know, large States tend to dominate because we have most of the Members. But here, a Senator from Connecticut is just as important as a Senator from California or a Senator from Iowa or—let's see, what is the least populous State? I think Wyoming or Alaska—is equal to a Senator from New York or Florida or Texas or California. This has been a great equalizing body.

Having served here for this time, I think I have some perspective on this Senate. As I said, at its best, this Senate is where our great American experience in democratic self-government most fully manifests itself. It is in this body that the American people, through their elected officials, can come together collectively to debate, deliberate, and address the great issues of our time. Through our Nation's history, it has done so. In the nearly quarter of a century I have been here—well, wait, it is 28 years that I have been here, so it is over a quarter of a century—the rights of Americans have been expanded: Americans with disabilities; we have ensured health insurance for millions of Americans.

In the early 1990s we voted here on the course to eliminate the national deficit in a generation, and we are on our way to doing that.

It is because of my great reverence for this institution and my love for our country that I come to the floor today. One does not need to read the abysmal approval ratings of Congress to know that Americans are fed up and angry with this broken government. In too many critical areas, people see a Congress that is riven with dysfunction. Citizens see their legislature going from manufactured crisis to manufactured crisis. They see a legislature that is simply unable to respond effectively to the most urgent challenges of our time.

Of course, there are a myriad of reasons for this gridlock—increased partisanship; a decline in civility and comity; too much power, I believe, in the hands of special interest groups; a polarizing instant-news media; and, I might add, the increasing time demands on all of us here involved in raising large amounts of money to run for reelection. But make no mistake, a principal cause of dysfunction here in the Senate is the rampant abuse of the filibuster.

It is long past time to make the Senate a more functional body, one that is better able, as I said, to respond to our Nation's challenges. The fact is that I am not a Johnny-come-lately to filibuster reform. In January of 1995—when I was in the minority, I might add—I first introduced legislation to reform the filibuster. We got a vote on it. Obviously, we did not win, but I made my points then, and I engaged in a very good debate with Senator Byrd at that time, in 1995. You can read it in the RECORD. I think it was probably January 8, if I am not mistaken, of 1995.

At that time, I submitted a resolution because, as I said, I saw an arms race in which each side would simply escalate the use of the filibuster and abuse procedural rules to a point where we would just cease to function here in the Senate. I said that at the time. I said that what happens is when the Democrats are in the minority, they abuse the filibuster against the Republicans. Then when the Republicans become the minority, they say: You Democrats did it to us 20 times, we will do it to you 30 times. Then when it switches again and the Democrats are in the minority, they say: Republicans did it to us 30 times, we will do it 50 times. We will teach them a lesson.

On and on, the arms race is escalated. I said at the time that we might get to a point where this body simply cannot function, and sadly that is what happened.

That is why 18 years after I first submitted my proposal, I believe reform is never more urgent and necessary. The minority leader stated that reformers advocate "a fundamental change to the way the Senate operates." To the contrary, it is the abuse of the filibuster, not the reforms being advocated, that has fundamentally changed the character of this body and our entire system of government. Again, I will point out now and I will point out repeatedly in my remarks that Democrats are not guiltless in this regard by any means, but the real power grab and the real abuse has come about when the Republicans have abused this tool—one that was used sparingly for nearly 200 years.

What has happened is that effective control of the Senate and of public policy has been turned over to the minority, not to the majority that has been elected by the American people. In many cases, those who are warning of a fundamental change to the nature and culture of the Senate are the very ones

who have already carried out a revolutionary change. Those of us who are seeking to reform the filibuster rules are not the ones who are doing a nuclear option or blowing up the Senate. Those who have abused the filibuster are the ones who have already changed the character of the Senate. What we are trying to do is restore some functionality to the Senate so that the Senate can operate with due regard for the rights of the minority. I will talk about that more in a moment.

The minority leader has recently called the filibuster "near sacred." I am sorry, he could not be more incorrect. The notion that 60 votes are required to pass any measure or confirm any nominee is not in the Constitution and until recently would have been considered a ludicrous idea, flying in the face of any definition of government by democracy.

Far from considering the filibuster "near sacred," it is safe to say that the Founders would have considered a supermajority requirement sacrilegious. After all, they experimented with a supermajority requirement under the Articles of Confederation, and it was expressly rejected in the Constitution because the Framers believed it had proven unworkable. That is right, the Articles of Confederation basically had a supermajority requirement, and they found that did not work. That is why, as I will mention in a moment also, the Framers of the Constitution set out explicitly five different times that this Senate requires a supermajority. You would have thought that if they wanted a supermajority for everything, they would have said so. No, they specified treaties, impeachments, expelling a Member—those require a supermajority as expressly spelled out in the Constitution.

The filibuster was once a tool used only in rare instances—most shamefully, as I said earlier, to block civil rights legislation. But across the entire 19th century, there were only 23 filibusters, in 100 years. From 1917, when the Senate first adopted rules to end filibusters, until 1969 there were fewer than 50—during all those years. That is less than one filibuster a year. In his 6 years as majority leader, Lyndon Johnson only faced one filibuster.

According to one study, in the 1960s just 8 percent of major bills were filibustered. Think about all the legislation that was passed—civil rights, Voting Rights Act, Medicare, Medicaid, Older Americans Act, Pell grants, Higher Education Act, Elementary and Secondary Education Act. Think of all the legislation passed in the 1960s. Just 8 percent was filibustered. In contrast, since 2007 when Democrats regained control of the Senate, there have been over 380 motions to end filibusters—380. This does not even include the countless bills and nominations on which the majority has not even tried to obtain cloture either because of a lack of time or because we knew it would be fruitless.

The fact is that for the first time in history, on almost a daily basis, the minority—and in many cases, just one Senator—routinely is able to and does use the threat of a filibuster to stop bills from even coming to the floor for debate and amendment. Unfortunately, moreover, because of outdated rules, an actual filibuster rarely occurs. Too often it is merely the threat of a filibuster, and that is the end of it; it is not debated or anything.

Let's get beyond the outrageous idea that Democrats, in proposing rules reform, would be initiating a revolution. In actuality, the changes that are seriously under discussion right now are simply a modest reaction to decades of escalating warfare which has culminated in 6 years of unrelenting minority obstructionism.

Because I feel so passionately that reform is so badly needed, I fully support the commonsense proposals from Senator MERKLEY and Senator UDALL. Their proposals would simply require the minority to actually filibuster, actually debate. A Senator would have to come to the floor and explain his or her opposition or offer his or her views on how a bill could be improved. Under the proposed reforms, the Senators would actually have to make arguments, debate, and deliberate. Senators would have to obstruct in public and be held accountable for that obstructionism.

Perhaps because this is such a commonsense reform, Republicans who have come to the floor have not addressed why they oppose rules that would require more transparency. Republicans have failed to explain to this body or to the public why a minority—again, the group the public chose not to govern here—why should they be able to kill a nominee by stealth? Republicans have failed to explain why they oppose more debate and more deliberation. Why do they oppose more debate, more deliberation, which is puzzling given that they profess that their sincere concerns are animated by the desire to foster debate and deliberation. But that is not what is happening. In stealth, they oppose a bill. They do not come to the floor, and they fail to defend why they do not even do that, why they will not even come to the floor and speak.

Instead, Republican after Republican has come to the floor and denounced what they claim are Democratic efforts to eliminate the filibuster and to, in their words, "fundamentally change" this body. The fact is that they are attacking the wrong plan. The truth is, under the reforms proposed either by Senator UDALL or Senator MERKLEY or one they have together or even under my proposal, the filibuster would still be a tool. Sixty votes would be needed to enact a measure, to confirm a nominee. Under their proposal, it would still require 60 votes.

Under my proposal as I first laid out in this body in 1995, I said: You know, sure, OK, on the first vote after you have the cloture motion filed, the first vote would require 60 votes.

If they didn't have 60 votes, they would have to wait 3 days, file another cloture motion, and then they would need 57 votes. If they didn't get 57 votes, they would have to file another cloture motion, wait 3 days, and they would need 54 votes. If they didn't get that, they would file another cloture motion, wait 3 days, and they would need 51 votes.

Under this proposal I have worked out with other groups and other people over the last almost 20 years, the fact is the filibuster could be used for what it was intended—slow things down. I believe the Senate ought to be a place where we slow things down. It should not be a place where just a few Senators can kill a bill. This should be a place where the filibuster is used not to slow things down but is actually used to kill a bill.

What I have proposed would be a period of time—actually up to about 16 days—where someone could slow a bill down, but eventually the majority would be able to act. I mean, what a revolutionary idea. The majority should be able to prevail. Think about our own elections. I guess maybe it could be extended further to say it is not enough to get 51 percent, or the majority of votes, we have to get 60; if they don't get that, they don't take office. What a revolutionary idea that somehow the majority should be able to move legislation.

I also agree there should be the rights of the minority to debate, discuss, and amend legislation. Again, the majority, after ample debate and deliberation, should have the power to govern, to enact the agenda the voters voted for, and to be held accountable at the ballot box. I guess I fundamentally believe in democracy. Maybe that is a failing on my part. I fundamentally believe the majority should rule, with respect for rights of the minority.

As I have noted, a revolution has already occurred in the Senate in recent years. Never before in the history of this Senate was it accepted that a 60-vote threshold was required for everything. This did not occur as a constitutional amendment or through any great public debate. Rather, this occurred because of the abuse of the filibuster. The minority party has assumed for itself absolute and virtually unchecked veto power over all legislation; over any executive branch nominee, no matter how insignificant the position; over all judges, no matter how uncontroversial.

In other words, because of the filibuster, even when a party has been resoundingly repudiated at the polls, that party retains the power to prevent the majority from governing and carrying out the agenda the public elected it to implement. In this regard, over 380 filibusters is not some cold statistic. Each filibuster represents a minority of Senators—sometimes a mere

handful—who are preventing the majority of the people's representatives from governing.

As one example, Republicans repeatedly filibustered a motion to proceed to legislation that would require more disclosure of campaign donations. The DISCLOSE Act is what it was called. A substantial majority of Senators supported the bill. Polling showed that 80 percent of the public believed the Supreme Court's decision in Citizens United was wrong, that we needed to know more disclosure of campaign contributions. Yet a small minority of Senators was able to prevent the bill from even being debated on the floor of the Senate, let alone receiving an up-or-down vote. That is just one example.

In the last two Congresses, consider some of the measures blocked by the minority, measures that received majority support on a cloture vote: the DREAM Act, Bring Jobs Home Act, Small Business Jobs and Tax Relief Act, Paying a Fair Share Act of 2012, Repeal Big Oil Tax Subsidies Act, Teachers and First Responders Back to Work Act, American Jobs Act of 2011, Public Safety Employer-Employee Cooperation Act, Paycheck Fairness Act, Creating American Jobs and Ending Offshoring Act.

Again, it is not that the bills were filibustered. The right to even debate these bills and vote on them was filibustered. It is one thing if we are on the bill and have a filibuster. No, we could not even debate them even though a majority of Senators voted for cloture. Not 60 votes but a majority. So the majority was thwarted from the ability to even bring these up and debate them or even letting people offer amendments.

It used to be that if a Senator opposed a bill, he or she would engage in a spirited debate, try to change people's minds, attempt to persuade the public, offer amendments, vote no, and then try to hold Members who voted yes accountable at the ballot box. Isn't that what it is about? In contrast, today—and to quote former Republican Senator Charles McC. Mathias in 1994:

> The filibuster has become an epidemic, used whenever a coalition can find 41 votes to oppose legislation. The distinction between voting against legislation and blocking a vote, between opposing and obstructing, has nearly disappeared.

When Senator McC. Mathias spoke and described it as an epidemic, in that Congress there were 80 motions to end filibusters. That is a number which pales in comparison to today, when we have had 380 motions to end the filibuster. To grind this body to a halt, all the minority party has to do is resort to the filibuster of a motion to proceed.

Under the critical jobs legislation, all the minority party had to do was block the motion to proceed and then they turn around and blame the majority for failing to address the jobs crisis. We had jobs bills; we could not get them up. We had jobs bills, but then they blamed us for failing to address the jobs crisis. It is no surprise that Americans are fed up with the broken government. As that list of blocked bills demonstrates, the anger is fully justified. In too many critical areas what people see is a dysfunctional Congress that is unable to respond collectively to the urgent challenges we face.

As the Des Moines Register recently noted:

> One message candidates heard from voters this election was contempt for partisan gridlock in Congress. One of the biggest obstacles to congressional action is the profusion of filibusters in the Senate.

It is no surprise that editorials throughout the country have recognized that the use of the filibuster must be changed.

USA Today has noted that the "filibuster has become destructively routine."

The Roanoke Times noted that "filibuster reform alone will not fix everything that is wrong with Washington, but it would remove one of the chief impediments to governing."

The Minnesota Star Tribune stated:

> Most Americans live under the impression that representative democracy's basic precept is majority rule. Sadly, that's no longer the case in the U.S. Senate, where the minority party has so abused the filibuster that it (the minority) now controls the action—or more accurately, the inaction. This perverts the will of the voters and should not be allowed to stand.

Mr. President, I ask unanimous consent that the copies of these editorials, and others from around the country, in support of filibuster reform be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the StarTribune, Dec. 25, 2012]

FILIBUSTER IN NEED OF MAJOR OVERHAUL

(By Editorial Board)

Most Americans live under the impression that representative democracy's basic precept is majority rule. Sadly, that's no longer the case in the U.S. Senate, where the minority party has so abused the filibuster that it (the minority) now controls the action—or more accurately, the inaction.

This perverts the will of the voters and should not be allowed to stand. As its first order of business next month, the new Senate should reform the filibuster rules in a way that restores fairness to the majority, preserves reasonable rights for the minority and keeps faith with the intent of the Constitution and the voting public. Democrats Jeff Merkley of Oregon and Tom Harkin of Iowa have solid proposals for their fellow senators to consider. What they should not consider is keeping the filibuster rules the way they are.

Let's be clear. This is not a partisan matter. The abusers in this case happen to be Republicans. They have masterfully mounted hundreds of filibusters in recent years to frustrate the majority Democrats and, in the process, have remade their leader, Mitch McConnell, into the Senate's de facto majority leader. But Democrats could—and probably would—stoop to the same depths the next time they're relegated to minority status.

As an idea, the filibuster has merit, and when used more sparingly in the past, it has won support from this page. Not rushing to judgment is a main function of the Senate, which was intended as a deliberative body. Extending debate also protects important rights for minority views. But the minority's clear abuse of those rights has gone beyond reason.

Here's the problem. On nearly every major bill, rather than accept a loss by a simple majority, the minority party launches a filibuster—a procedure that pushes the bill into a limbo of theoretically endless "debate" unless a supermajority of 60 votes can be rounded up to stop it. Getting 60 senators to agree on anything is nearly impossible. So the wheels of government grind to a halt. It's a perfect tactic for the minority, because the public tends to blame the majority for ineffectual leadership.

But it's worse than that. To mount and maintain a filibuster takes no real effort or conviction. The minority party never has to stand up on the Senate floor to defend its position. There is no real debate, no real deliberation on the nation's important business, or on the scores of judges and other federal officials whose nominations the Senate must confirm.

Not since 1970, when "silent filibusters" were adopted, have senators had to hold the floor in the manner made famous by the film "Mr. Smith Goes to Washington" (1939) or the endless tag-team ordeals that Strom Thurmond and other southern senators employed against civil-rights legislation in the 1960s.

Even In those bygone days, senators reserved filibusters for extraordinary moments. But now they are routine. In his six years as majority leader, Harry Reid has faced 380 filibusters. Lyndon Johnson, in his six years as majority leader (1955–1961), dealt with one.

"If you had a child acting like this, you'd worry about him," former Vice President Walter Mondale told a University of Minnesota audience last week. As a senator, Mondale led efforts to reform the filibuster in 1975, but clearly his changes weren't enough to halt the abuse.

Merkley's proposal would bring back the traditional "talking filibuster." If more than half of senators voted to end debate, but not the 60 votes required, then senators would have to hold the floor with talking marathons.

Harkin offers a "sliding filibuster." If the 60-vote threshold to halt a filibuster isn't met, a 57-vote threshold kicks in three days later, then a 54-vote threshold three days after that. Finally, after nine days, the bill could pass by a simple majority.

A third option is to get rid of the filibuster altogether. A pending lawsuit from Common Cause proposes just that, arguing that requiring a supermajority is unlawful except on treaties and other Matters enumerated in the Constitution.

As currently practiced, the filibuster is a cynical affront to voters and to the precepts of representative democracy. It does not extend debate in a meaningful way. It does not make the Senates deliberative body. It does more harm than good. It should be reformed at the earliest possible moment

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[From the Des Moines Register, Dec. 6, 2012]

TIME HAS COME TO END SENATE LOGJAM

(By The Register's Editorial Staff)

One message candidates heard from voters this election was contempt for partisan gridlock in Congress. One of the biggest obstacles to congressional action is the profusion of filibusters in the Senate.

Now is the time to reform Senate rules to break that legislative logjam.

It's a longstanding tradition for senators to block legislation by merely talking it to

death, known as a filibuster. Though by definition a filibuster means literally obstructing Senate procedures by continuous speech by members on the floor, a senator can have the same effect these days by simply threatening to filibuster. That is increasingly common.

The only way to stop a filibuster, according to the Senate's rules, is by a "cloture" vote, which requires the support of three-fifths of the body, or 60 senators. The upshot is a minority of senators can block the will of the majority.

In the past six years alone, 385 cloture motions have been filed in the Senate calling for votes to end filibusters. That is more than all of such motions filed in the 70-year period after the cloture-vote rule was created, according to a report by the Brennan Center for Justice. This has become so common that it is assumed a 60 percent supermajority is required for all votes.

That was not the intent of the framers, however. The Constitution requires a supermajority vote for a limited number of issues, which means only a majority is necessary on all others.

Still, the filibuster is deeply rooted in Senate tradition. The Senate cherishes the right of any senator to be fully heard. Thus, the rules say no senator "shall interrupt another senator in debate without his consent." In other words, one senator can hold the floor as long as he or she has the capacity to speak.

Originally one had to actually talk continuously to prevent a bill coming to a vote, which Southerners did to great effect to block civil rights laws in the 1950s. Indeed, the late Sen. Strom Thurmond of South Carolina still holds the record for talking 24 hours and 18 minutes in August 1957. The previous record holder was Louisiana Sen. Huey Long who would read aloud recipes, instructions on how to fry oysters and the occasional "rambling discourse on the subject of 'potlilkker'," according to one account.

The Senate has sought to curb the filibuster before. In 1917, the rules were changed to provide for a way to end a filibuster if two-thirds of the body is in favor, or 67 votes. The threshold was lowered to three-fifths, 60 votes, in 1975.

Some argue that changing the rules would destroy the Senate, but the party making that case is usually in the minority and is using the filibuster to frustrate the majority. Both parties are guilty of abusing the rules to make it next to impossible for the Senate to perform its duty, which is to act on legislation. Both parties should agree on a compromise to reform the filibuster.

The Senate should agree on a rule change that recognizes the Senate's respect for hearing the views of the minority and to preserve the Senate's role in slowing reckless proposals from the House for more thoughtful consideration.

But it should not preserve the status quo, which means that nothing gets done in the Senate, and by extension nothing gets done in Congress. That is neither the intent of the Constitution or of the American people.

[From the Los Angeles Times, Dec. 12, 2012]

GO NUCLEAR ON THE FILIBUSTER

(Editorial)

Harry Reid offers a plan to curb a tactic that has created gridlock in Congress. It's a good start.

Nothing exposes partisan hypocrisy quite like the filibuster, that irksome parliamentary rule that allows a minority of U.S. senators to block legislation, judicial appointments and other business by requiring a 60-vote majority to proceed to a vote. Almost invariably, the party in power considers the filibuster to be an enemy of progress that must be squashed, while the minority fights to preserve it at all cost. That the same players often find themselves arguing from opposite sides depending on whether they control the Senate or are in the minority hardly seems to trouble most lawmakers.

So comes now Senate Majority Leader Harry Reid (D-Nev.) with a campaign to alter the filibuster rule using the so-called nuclear option, which if invoked on the opening day of the new legislative session would allow senators to change the rules by majority vote. Republicans are appalled that he would consider such a ploy, even though they floated the same proposal when they held the majority in 2005. Back then, reform was blocked when a Gang of 14 senators led negotiations that kept the filibuster largely intact, and top Senate Republicans are reportedly reaching out to their Democratic counterparts in an effort to repeat that "success." We hope they fail.

For the record, we were rooting for the Republicans to go nuclear in 2005, and we feel the same way with Democrats in control. This is not a venerable rule created by the Founding Fathers to protect against the tyranny of the majority, but a procedural nicety that has been altered many times throughout history. In its current incarnation, it goes much too far and has produced gridlock in Congress.

Reid reportedly aims to return to the era of the "talking filibuster," when senators who wanted to hold up a bill had to stand up and debate it ceaselessly, day and night. This doesn't go quite far enough; Reid should also place limits on the number of opportunities for senators to mount filibusters, and put the burden on minority opponents by forcing them to come up with 40 votes to sustain a filibuster, rather than requiring the majority to drum up 60 votes to end it. Nonetheless, Reid's plan is a nice start, requiring those who want to hold up legislation to do so publicly and to use their oratorical skills to explain why such a move is justified.

Even many Democrats realize that someday they'll be in the minority, and fret that a future Republican-dominated chamber will use Reid's precedent to put even stricter limits on filibusters. But that's no reason not to approve Reid's proposal. If some future Senate majority wants to go thermonuclear, that's a debate for another day.

[From the Baltimore Sun, Dec. 11, 2012]

ENDING FILIBUSTER ABUSE

Our view: In a matter of weeks, incoming Senators can strike a blow for democracy and approve badly needed reforms to the chamber's dysfunctional filibuster rule.

The announcement last week that South Carolina's Jim DeMint is leaving his Senate seat to run the Heritage Foundation caused some in Washington to wishfully think that perhaps the move might usher in a more congenial, if not cooperative, outlook in the U.S. Senate. But while Mr. DeMint set the gold standard for ideological purity (denouncing his own party's candidates from time to time when they failed to measure up to his tea party, ultraconservative viewpoint), there are still plenty in the GOP with the flexibility of a ramrod.

The Senate's legislative logjam was well-documented long before the "fiscal cliff' approached. Democrats may hold a majority—and will even enjoy a slightly larger one next year courtesy of the nation's voters—but the filibuster has become so abused that it's simply become a given in the chamber that passing legislation of any substance requires a 60-vote super-majority. That's the minimum required to invoke cloture and prevent or curtail a filibuster. Even getting a presidential nominee approved has become maddeningly difficult, no matter how qualified or uncontroversial the prospective judge or appointee may be.

[From Cleveland.com, Nov. 27, 2012]

GET THE SENATE OUT OF ITS OWN WAY

(By the Plain Dealer Editorial Board)

The founders clearly intended the U.S. Senate—with its six-year terms, its guarantee of equal representation for every state and, initially, the indirect election of its membership—to be a brake on the presumably more populist House of Representatives. There is no evidence the Constitution's architects envisioned it as a place where legislation goes to die.

And yet that's what it has become.

According to the Brennan Center for Justice at the New York University School of Law, the Senate has passed a record-low 2.8 percent of bills introduced during the current 112th Congress. Judicial nominations have languished on average for more than six months.

That inaction can be tied to the increased use of filibusters—or even the threat of them—a tactic that, operationally, means it takes a supermajority of 60 votes to pass anything.

That's not only anti-democratic—a point made in the Federalist Papers by Alexander Hamilton and James Madison—it also is embarrassing. The Senate has simply stopped making decisions on critical issues. Each parties uses procedural tactics to frustrate the other, and as a result, the work of the American people isn't getting done.

Now some junior Democrats want to vote on changing the Senate's rules when the 113th Congress opens in January, and Majority Leader Harry Reid says they'll get that vote. The suggested changes make sense: No more blocking motions to bring a bill to the floor or convene conference committees. And a requirement that senators who wish to filibuster a bill once again stand and talk for hours on end to block its consideration. We'd add an idea from the nonpartisan No Labels group: a 90-day deadline for confirmation votes.

Republicans who favored similar reforms when Democrats used the rules to frustrate their majority during the Bush years now complain that Reid would destroy the Senate's culture if he rams through changes by a majority vote—and some veteran Democrats, who recall being in the minority, agree. There must be a way for Senate to resolve this impasse in a way that respects minority views, yet allows real work to proceed.

[From the Columbian, Dec. 18, 2012]

Many changes will be required for Congress to overcome its current soul-crushing and will-sapping partisan divide. But even the longest journey begins with a single step, which is why the Senate should enact two quick and easy reforms when the 113th Congress convenes in January.

No, this has nothing to do with the so-called "fiscal cliff," which is a crisis that for now is wholly owned by the House of Representatives. But it is a reminder that there are pressing issues in addition to the nation's financial crisis. Among them is the fact that there is gridlock in the Senate. Yes, the austere, august Senate, originally designed as a refuge of nobility and decorum, is no more noble than the sandbox fight that is the House.

During the past six years, Republicans used the parliamentary procedure known as a filibuster almost 400 times to waylay legislation. That is about twice as often as the

procedure was used during the previous six years, and it included the filibustering of simple procedural motions. All of this suggests the Republicans have been more interested in obstructionism than productivity, and we would hope for a little less paralysis and a lot more action from the next Senate.

To be sure, the filibuster is a necessary and often-productive method for preventing tyranny of the majority. The party that is not in power must have some means to prevent being bulldozed by an overzealous ruling party that wishes to limit debate. But the modern filibuster isn't the filibuster they taught about in your grandfather's high school Civics class.

The traditional filibuster evokes images of a courageous legislator righteously standing up for his or her beliefs, speaking for hours on the Senate floor and resorting to reading the phone book if necessary to prevent a bill from coming to a vote. Yet the modern filibuster consists of little more than a notification that a filibuster is in effect—and that notification can be delivered anonymously. The filibuster then prevents a vote and effectively kills legislation unless a cloture vote can be passed to end the "debate." This essentially means that 60 votes are required to pass any legislation out of the Senate, providing the minority party with more power than voters have willed to them.

That brings us to our proposals:

Restore the rule requiring actual floor debate to sustain a filibuster. Not only would this force senators to act on their convictions rather than their partisan predilections, but in a world of 24/7 media coverage it would allow voters to see exactly who is holding up legislation and to consider why they are doing so. If a senator wishes to read recipes in order to prevent a vote on the Paycheck Fairness Act, so be it. But let the country watch.

Prohibit anonymous filibusters. If a senator wishes to prevent a vote on the Dream Act, fine. But he or she should own it, for the whole world to see. The trick is that any procedural changes governing Senate business can be passed by a simple majority—if the change is made on the first day of a new session. The 113th Congress will convene on Jan. 3, 2013, and we urge the new Senate to show that it is interested in a new way of doing business—one that actually welcomes debate and accountability rather than allowing legislators to silently and anonymously block the people's business.

We should expect nothing less from those we send to Washington.

[From the San Bernardino County Sun, Dec. 7, 2012]

BACK TO THE FUTURE ON FILIBUSTER REFORM

(By the San Jose Mercury News)

The Senate needs to go back to the future on filibuster reform. Senators should have to stand their ground and raise their voices on the Senate floor, around the clock if necessary, a la Jimmy Stewart in "Mr. Smith Goes to Washington," to keep legislation from coming to a vote.

Back in the day, a minority senator had to have strong personal convictions against legislation to undertake the onerous, sleep-depriving filibuster, talking and talking and talking to block action. Today, a senator, or a group of senators, can merely threaten a filibuster, and suddenly the legislation requires a 60-vote supermajority to move forward to a vote. It's outrageous. Senate Majority Leader Harry Reid wants to change the rules, and President Obama should be helping to persuade the handful of Democratic senators who are on the fence.

California Sen. Dianne Feinstein is one of them. She told the publication The Hill that she thinks it would be a mistake to use the Senate's power to change the filibuster rules, but she said, "I'll listen to arguments."

Senate Republicans' record should be argument enough. And if the parties' control of the Senate were reversed, that would be just as wrong.

Not one filibuster was recorded in the Senate until 1841. The average in the decade of the Reagan and Carter years was about 20 per year. Senate Republicans used the filibuster a record 112 times in 2012 and have used it 360 times since 2007.

They have stopped legislation that has widespread public support. GOP senators blocked a major military spending bill, a badly needed veterans' jobs bill and the Dream Act, all of which would have passed with a majority. They stifled the Disclose Act, which would require greater transparency in campaign advertising. In a particularly craven abuse of the system, they have halted the nominations of nearly two dozen judicial appointments, causing backlogs in courts that delay justice for people and businesses across the country.

Some Democrats fear that Republicans will win control of the body in 2014, when 20 Senate Democrats will have to defend their seats, and they'll want the power minority Republicans have now. But then Republicans could change the rules.

In "Mr. Smith," an idealistic Jimmy Stewart used the filibuster in an admirable way. But it has an ugly history, often as a last-ditch attempt to stop overdue change. In 1957, Sen. Strom Thurmond spoke for a record 24 hours and 18 minutes against the Civil Rights Act, which he labeled unconstitutional and "cruel and unusual punishment."

The Senate is supposed to debate the great issues of the day, not stop them from being debated. Senators should change the rules and get back to work.

[From the Contra Costa Times, Dec. 3, 2012]

FILIBUSTER RULES MUST CHANGE AND LAWMAKERS NEED TO GET BACK TO WORK

(Contra Costa Times editorial)

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The Senate is supposed to debate the great issues of the day, not stop them from being debated. Senators should change the rules and get back to work.

Mr. HARKIN. At issue in this debate is a principle at the heart of our representative democracy. This is from Alexander Hamilton in Federalist Paper No. 22:

> The fundamental maxim of republican government . . . requires that the sense of the majority should prevail.

The Framers, to be sure, put in place important checks to temper pure majority rule. For example, the Bill of Rights protects fundamental rights and liberties. Moreover, the Framers imposed structural requirements. For example, to become a law, a bill must pass both Houses of Congress and then it is subject to the President's veto power, and then, of course, there are always the courts and the Supreme Court to rule on the constitutionality of legislation.

The Senate itself was a check on pure majority rule. As James Madison said:

> The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch.

Meaning the House of Representatives.

To achieve this purpose, citizens from the smallest States have the same number of Senators as citizens from the largest States, which I commented on earlier. Further, Senators are elected every 6 years, not every 2 years. These provisions in the Constitution are ample to protect minority rights and to restrain pure majority rule.

What is not necessary and what was never intended is an extraconstitutional empowerment of the minority through a de facto requirement that a supermajority of Senators be needed to even consider a bill or nominee, let alone to enact a measure or confirm an individual for office.

As I said earlier, the Constitution was expressly framed and ratified to correct the glaring defects of the Articles of Confederation. The Articles of

Confederation required a two-thirds supermajority to pass any law and a unanimous consent of all States to ratify any amendment. Well, we know that the experience under the Articles of Confederation was a dismal failure, one that crippled the national government. The Framers were determined to remedy those defects under our new Constitution.

It is not surprising that the Founders specifically rejected the idea that more than a majority would be needed for most decisions. In fact, the Framers were crystal clear about when a supermajority is needed—five times. It is spelled out clearly in the Constitution: ratification of a treaty, the override of a veto, votes of impeachment, passage of a constitutional amendment, and the expulsion of a Member. It is expressly pointed out in the Constitution.

It should be clear, especially to those who worship at the shrine of "original intent," that if the Framers wanted a supermajority for moving legislation or confirming a nominee, they would have done so. They would have written it in there. Not only did they not do so, until 1806 the Senate had a rule that allowed for a motion for the previous question. That goes back to the British Parliament. It permitted a majority to stop debate and bring up an immediate vote.

It was Vice President Aaron Burr, as he was leaving the Senate and they were reforming the rules, who said: You know, this is never used. We might as well do away with it because it is never used, anyway. So they did away with the motion for the previous question, but the point being that the first Congress in the first Senate enacted that. They had that motion for the previous question. The Founders were very clear why a supermajority requirement was not included. As Hamilton explained, a supermajority requirement would mean that a small minority could "destroy the energy of government."

That is what Madison said. A supermajority would mean that a small minority could "destroy the energy of government." Government would, in Hamilton's words, be subject to the "pleasure, caprice or artifices of an insignificant, turbulent or corrupt junta."

James Madison, as I said, said this:

> It would no longer be the majority that would rule, the power would be transferred to the minority.

Federalist Paper No. 58. When James Madison—sort of the author of our Constitution—said, no, you cannot have a supermajority; if you do that, then the minority would rule, the power would be transferred to the minority—unfortunately, Madison's warning has come true. In the Senate today—the United States Senate—the minority, not the majority, controls. In today's Senate, American democracy is turned on its head. The minority rules, the majority is blocked. The majority has responsibility and accountability, but the majority lacks the power to govern. The minority has the power but lacks accountability and responsibility. This means the minority can block bills and prevent confirmation of officials and then turn around and blame the majority for not solving the Nation's problems. The minority can block popular legislation and then accuse the majority of being ineffective.

I firmly believe we need to restore the tradition of majority rule to the Senate. Elections, I believe, should have consequences. That is why I developed my plan, as I said, almost 20 years ago to amend the standing rules to permit a decreasing majority of Senators over a period of days to invoke cloture on a given matter. I believe it is clear in the history of the Senate and of the Framers of the Constitution.

There is the story, of course, that has been told many times. It may be a popular story, I don't know. Thomas Jefferson, of course, was not here for the drafting of the Constitution. He was in France. He came back home and looked at the Constitution. He was having breakfast with George Washington. As the story goes, Jefferson was upset about the Senate. He looked upon it as another House of Lords. So he asked Washington why he allowed such a thing to happen, that the Senate would be created. Washington supposedly said to him: Why did you pour your tea into the saucer? Jefferson said: To cool it down. Washington purportedly said: Just so. That is why we created the Senate, to cool things down, to slow down legislation, apart from that popular body over there, so there could be a more sober second look at things. What Washington did not say, as far as I know, was that the Senate was created to be a trash can where legislation could be killed and stopped. The idea was to slow things down, to deliberate.

Senator George Hoar noted in 1897 the Framers designed the Senate to be a deliberative forum in which a "sober second thought of the people might find expression." That is what the Senate is supposed to be about. But at the end of ample debate and with the right of the minority to be able to offer amendments and have them voted on, the majority should be allowed to act with an up-or-down vote on legislation or on a nominee. In this way, we could restore this body to one where government can actually function and where we can actually legislate.

I think this plan also has another advantage. Recently, the minority leader defended the abuse of the filibuster on the grounds that it forces the majority to compromise and to "resolve the great issues of the moment in the middle." I strongly disagree with the minority leader. Right now, the fact is, because of the abuse of the filibuster, the minority has no incentive to compromise. Why should they? They can stop it. They have the power to block legislation without even coming to the floor to explain themselves. In such a world, as we have seen over the past few years, why would the minority come to the table to cut a deal? I showed my colleagues the list of all the legislation they have blocked the last couple years. There wasn't any overture from the minority to compromise. They just said: We are going to kill it; the majority is not going to be able to bring it up.

The DREAM Act, for example. What are those other bills on the chart? The DREAM Act, and the other ones listed we wanted to bring up. Here is the list again. The DREAM Act. Did the Republicans say we want to compromise? No, they just killed it. The Bring Jobs Home Act, just kill it. The Paycheck Fairness Act, just kill it. Creating American Jobs and Ending Offshoring Act, just kill it. There was no real attempt to compromise because they didn't have to compromise.

In contrast, under my proposal, where we would have 60 votes at the beginning and if we didn't have 60 votes, we would file another cloture motion and wait 3 days, then we would have another vote. Then we would need 57 votes. Then, if we didn't get 57, we could file another cloture motion and then we would wait 3 days and need 54 votes. If we didn't get that, we would wait 3 more days, file another cloture motion and only need 51 votes.

This would be a period of about 16 days, plus 30 hours of debate, that would be allowed under my proposal. Here is why that would be a true compromise. The minority wants the right to offer amendments to be heard on a bill. I understand that. They should have that right. The most important thing to the majority leader—whether Republican or Democrat, whoever the majority leader may be—the most important thing for the majority leader is time on the floor. So someone files a bill, it is filibustered by the minority, they have a cloture vote, and let's say there are only 53 votes for it. The minority knows that at some point, this bill is going to come to the floor. We will get a vote on it. The majority leader knows that will happen, but it is going to chew up a couple weeks' time. The most important thing to the majority leader is time, so the majority leader would like to collapse that time. The minority leader would like to have the right to offer amendments, and therein is the compromise. The minority leader comes and says: If we can offer these amendments, we will collapse the time; if not, we will chew up a couple weeks' time. That provokes compromise. But when one side knows that with 41 votes they can absolutely trash can something, why should they compromise if they have the 41 votes?

Again, I wish to emphasize another fact about my proposal. The Republicans have said the filibuster is necessary because Democrats increasingly employ procedural maneuvers to deprive them of their right to offer amendments. I want my colleagues to

know I am sympathetic to that argument. That is why in the last Congress I included in my resolution the guaranteed right to offer germane amendments; the inherent right of the minority to offer those amendments.

Unfortunately, of course, every Republican voted against my proposal, and that is because Republicans currently want the best of both worlds: the right to offer nongermane amendments and the right to obstruct, and that doesn't make sense.

Again, no one should be fooled. The fact is the radicals who now hold sway in the Republican Party are not concerned with making the government or the Senate function better. That is because the current use of the filibuster has nothing to do with ensuring minority rights to debate and deliberate or the right to amend; otherwise, they could support either one of these proposals, either mine or Senator MERKLEY's or Senator UDALL's. Nor have I ever heard one Republican come to the floor and unequivocally state that if the majority leader stopped filling the amendment tree, they would routinely vote for cloture, even if they opposed the underlying bill. I have not heard one of them say that because the current use of the filibuster has nothing to do with minority rights. It has everything to do with obstruction, hijacking democracy, and a pure power grab designed to nullify elections in which the public has rejected the minority's ideas and placed them in the minority so the majority could act.

The minority leader, I must say, has been frank about this approach to governing. In a speech about the balanced budget amendment, he said the following. Listen to this. This is our minority leader:

> The time has come for a balanced budget amendment that forces Washington to balance its books. The Constitution must be amended to keep the government in check. We have tried persuasion. We have tried negotiations. We have tried elections. Nothing has worked.

Think about that. In other words, when elections—when democracy doesn't work, what does the minority leader want? The ability to undermine the majority from acting in the Senate. Imagine that. We have tried elections and the elections didn't go their way. They have tried elections. So if they can't do that, then they have to do something else. It seems to me the ballot box ought to be determinative of what kind of government we have.

Republicans have repeatedly filibustered motions to proceed. How can they offer amendments if we can't even bring it up? They filibuster judicial nominees. Of course, nominations can't be amended; again, belying the argument that many Republicans use because of filling the tree. There is no tree when it comes to nominations.

I want to now emphasize something. I have been saying all along the Republicans and how they have been using the filibuster. I want to say unequivocally the Democrats don't come to this with clean hands, I can tell my colleagues. It has been both sides. It depends on who is in the majority and who is in the minority. That is all it depends on. As I said earlier when I first brought this up in the 1990s, I warned then of an escalating arms race. I have been in the Senate long enough to have five different changes in the Senate between majority and minority, and every single time the number of filibusters goes up—every time. Democrats say to Republicans: You filibustered 30 times last Congress. We are now in power; we will filibuster you 60 times. The Democrats get kicked out and the Republicans come back and they say: They did it 60 times and we will do it 100 times, on and on and on.

It is akin to an arms race. So any time I use the word "Republican" generically, we can just substitute minority. I don't care what minority, Democrats or Republicans. It doesn't make any difference. The minority in the Senate should not have the absolute power to trash can something. It should have the power to slow things down, to debate, to amend, to deliberate, but eventually the majority—the people whom the people at the ballot box in this country have put in charge to govern—should at some point be allowed to govern. If I am in the minority, all I want is the right to be able to debate, have my views heard, offer amendments.

I might also say this: The right of the minority is not to win. The minority doesn't have the right to win, but it sure has the right to offer amendments and to be heard and to be able to try to sway people. I have been in the Senate when we have had amendments and, amazingly enough, we get some Republicans and some Democrats and it passes, even though some Democrats and some Republicans oppose it. That very rarely happens any longer.

Again, I have been talking mostly about Republicans generically, and that is because they are in the minority now. I said the same thing about Democrats when the Democrats were in the minority. This is not a minority right. It is nothing less than a form of tyranny by the minority. Who said that? That was Senator Frist, the Republican leader, again, in November of 2004, when he was in the majority and we were in the minority: "This filibuster is nothing less than a formula for tyranny by the minority." He was right. It just depends on who is in the minority and who is in the majority.

That is why we have to make a change. It could be Democrats, it could be Republicans, it could be—even a bipartisan coalition, if it is a minority, a small minority.

As I said, I don't think there is anything radical about what I have introduced. As I noted, the filibuster was not in the Constitution. It was rejected by the Founders. There is nothing sacred about requiring 60 votes to end debate. The Senate has adopted rules and laws that prevent the filibuster in numerous circumstances. Get that. This Senate has adopted rules that forbid the filibuster in certain cases. The budget cannot be filibustered, war powers cannot be filibustered, international trade acts—imagine that. International trade acts cannot be filibustered. Congressional Review Act, disapproval of regulations, cannot be filibustered. So if the filibuster is so sacred, why have we carved out exceptions for international trade acts?

Moreover, article I, section 5, clause 2 of the Constitution, the rules of proceedings clause, specifies: "Each House may determine the rules of its proceedings." Again, my resolution, far from being unprecedented, stands squarely within the tradition of updating Senate rules as appropriate to fostering more effective and functioning legislation. For example, beginning in 1917, the Senate passed four significant amendments to its standing rules, the latest in 1975, to narrow, to shape the filibuster. In 1979, Senator Robert Byrd made clear that the Constitution allows a majority of the Senate to change its rules. He said:

> [t]he Constitution, in Article I, section 5, specifies that each House may determine the rules of its proceedings. Now we are at the beginning of a Congress.

Senator Byrd said:

> This Congress is not obliged to be bound by the dead hand of the past . . . It is my belief—which has been supported by rulings of Vice Presidents of both parties and by votes of the Senate in essence upholding the power and right of a majority of the Senate to change the rules of the Senate at the beginning of a new Congress.

Senator Byrd: "This Congress is not obliged to be bound by the dead hand of the past." He said that. " . . . power and right of a majority of the Senate to change the rules of the Senate at the beginning of a new Congress."

Again, this was also the opinion of the Republican Party. As I mentioned, in 2005 the Republican policy committee, chaired by our former colleague Senator Kyl, stated:

> The Senate has always had, and repeatedly has exercised, the constitutional power to change the Senate's procedures through a majority vote.

That is a statement from the Republican policy committee in 2005.

Those who say this is some kind of nuclear option, blow up the Senate, all these terms about nuclear options—no, it is not a nuclear option. As Senator Byrd said and as Senator Kyl said, "The Senate has always had, and repeatedly has exercised, the constitutional power to change the Senate's procedures through a majority vote."

There are those now—I must admit, some in my own party on this side of the aisle in the Senate—who say that in order to change the rules, we have to have a two-thirds vote. Now, why is that? Well, because some Senate in the past set down the rules. They said that in order to change these rules, you need a two-thirds vote. Are we bound

by that dead hand of the past? Not at all. Not at all. Each new Congress—each time the Senate convenes after a new Congress forms—can by majority vote change its own rules. It is not a nuclear option at all.

To be very clear, I opposed the Frist motion at that time in 2005, and I made it clear why—because they were attempting to change the rules in the middle of a Congress.

While I believe the Congress has the power—I'm sorry, it was the Republican policy committee. It is at the beginning of a Congress.

Senator Byrd said:

> It is my belief—which has been supported by rulings of Vice Presidents of both parties and by votes of the Senate in essence upholding the power and right of the majority of the Senate to change the rules of the Senate at the beginning of a new Congress.

I mean, you can't go changing rules every other week. How do you know what is going to happen? But at the beginning of a Congress every 2 years, the Senate has the right by a majority vote to set down the rules, and you operate by those rules for 2 years. What Senator Frist was trying to do was change it in the middle of the game. Well, if you go down that pathway, my goodness, the majority could change the rules next week and the week after, do it one time one week and one time the next. How would you ever know what the rules of the road were? The only reason I opposed the Frist motion at that time was because it was changing it in the middle of a Congress.

Here is a letter from numerous constitutional scholars, including Charles Fried, Solicitor General under President Reagan, and Michael McConnell, a former Federal judge nominated by President George W. Bush. These scholars make clear that at the beginning of a new Congress, a majority of the Senate can change its rules. Here is the letter, and it reads in part:

> Some, however, have sought to elevate the debate to constitutional dimensions by suggesting that it is institutionally improper for a new Senate to alter the Senate's rules by majority vote because the internal procedures adopted by prior Senates have required a two-third majority to allow a vote on a motion to alter the rules.
>
> With respect, such a concern confuses the power to change the Senate rules during a session with the unquestioned constitutional power of each incoming Senate to fix its own rules unencumbered by the decisions of past Senates. The standing two-thirds requirement for altering the Senate's rules is a sensible effort at preventing changes to the rules in the midst of a game. It cannot, however, prevent the Senate, at the beginning of a new game, from adopting rules deemed necessary to permit the just, efficient and orderly operations of the 113th Senate. . . .

This letter from Charles Fried, Solicitor General under President Reagan, and Michael McConnell, a former Federal judge nominated by President George W. Bush, states:

> We agree with the overwhelming consensus of the academic community that no pre-existing internal procedural rule can limit the constitutional authority of each new Senate to determine by majority vote its own rules of procedure.

We agree with the overwhelming consensus of the academic community that no pre-existing internal procedural rule can limit the constitutional authority of each new Senate to determine by majority vote its own rules of procedure.

That is very profound. So it is not just me as a Democrat. Here are two Republicans, very prominent Republicans, saying the same thing.

The last significant rules change, I might point out, was in 1975, when the number of votes necessary for cloture was set at 60. There is only one Senator today—Senator LEAHY—who was in the Senate in 1975 to vote on that current version of rule XXII. No one else was here then. We have had how many different Senates since that time, and yet that dead hand of the past continues to rule.

Mr. President, I would like to emphasize that I firmly agree that amending the standing rules is necessary. Informal agreements are insufficient to return the Senate to functionality. We had this last time—sort of a handshake agreement to make the Senate a better institution through fewer filibusters, procedural delays, et cetera. Looking back over the last 2 years, I don't think anyone would agree that this gentleman's agreement was very effective.

The minority leader recently stated that the reforms being advocated by me and others are being done with the "purpose of consolidating power and further marginalizing the minority voice." Nothing—nothing—could be further from the truth. I want to be clear that the reforms I advocate are not about one party or one agenda gaining an unfair advantage. It is about the Senate as an institution operating more fairly, effectively, and democratically. Those of us who went to law school all remember that if you come into the court of equity, you have to come in with clean hands. I hope that I have clean hands since I first offered this when I was in the minority. I was in the minority.

Again, I would point out that it belies belief that sometime in the future, Democrats won't be in the minority again. It is going to happen, and it should. No one party should rule here for long periods of time. We need to have that kind of change. But what we need is the ability of whoever is in the majority to be able to govern. That is what the people elected them to do.

Well, the truth is that we do not function here. We do not function in the way we are supposed to under the Constitution—something both Democrats and Republicans should care about. What was never envisioned and what should not be allowed to continue is a system where bills are prevented from being debated or the idea that a small minority can block legislation or nominees without even coming to the floor to explain themselves.

Finally, there is one other red herring that keeps coming up, and that is that somehow the reform I am proposing or any reform will somehow make the Senate like the House. I have heard that from Members from the other side of the aisle—oh, we will just become like the House of Representatives.

I have to ask the question, since when did the Senate become defined by rule XXII, the cloture rule? Why does that define the Senate? It seems to me the Senate was designed in the Constitution where we have two Senators from every State, small and large; where we are reelected every 6 years, not every 2; where the Senate has certain functions on treaties and on nominations that the House of Representatives doesn't have; and where the Constitution is very clear; there are five times where the Senate must have a supermajority to act.

Again, I would point out that the Senate will, by its very nature—even under my proposed reform or even that of Mr. UDALL or Mr. MERKLEY—still operate based on unanimous consent, and each Senator will continue to understand that maintaining good relationships with all Senators, working hard to become experts in issues, and drafting legislation and amendments will remain the essence of what it means to be a Senator, not the ability to filibuster.

To those who say we have become more like the House, I say that is not going to happen. Well, it could. Sure it could. Some future Senate could wipe out all the rules—wipe out all the rules. Now, they couldn't do away with the constitutional aspect. They couldn't make us elected every 2 years, for example, but take away the function of the Senate in terms of treaties, impeachments, and things like that, sure. Any future Congress can change the rules.

I think that because of the nature of the Senate, the way it is established, because of the way it is set in the Constitution—two from every State, not popularly elected every 2 years—that means Senators will have to work with one another. They will have to exhibit that kind of comity—c-o-m-i-t-y, not comedy—of recognizing that each Senator should have the right to amend, to debate, to discuss the question, to offer amendments.

Again, we were told that somehow the filibuster—this idea that the filibuster somehow defines the Senate, again, until 1970 there was approximately one filibuster per Congress. Did anyone ever suggest then that because there was not the rapid use of a filibuster, the Senate was no different from the House? Was the Senate of Clay, Wagner, Vandenberg, Johnson, and Taft just another House of Representatives? Were the giants in the Senate who came before us—the Daniel Websters, the Henry Clays, the Robert Tafts, the Hubert Humphreys—were they any less a Senator because they were not defined by a de facto 60-vote supermajority requirement?

I believe the Senate should embrace George Washington's vision of this body, if that story is true about him and Jefferson and the saucer and the tea. The Senate was set up to slow things down to ensure proper debate and deliberation. That is what the Founders intended. That is what we have advocated and I advocate. We will not become the House. As one author has noted, however, the increasing use of the filibuster has converted the Senate from the saucer George Washington intended into a deep freeze and a dead weight.

At the heart of this debate is a central question: Do we believe in democracy?

Republicans and, sadly, many of my colleagues in my own caucus repeatedly warn about advancing these reforms because Democrats will find themselves in the minority one day and we may want to stop something. Well, I am sorry, I don't fear democracy. If the people of this country at the ballot box put the Republicans in charge of the Senate, the Republicans ought to have the right to govern. We should have the right to be able to offer amendments and debate and deliberate, but we should not have the right to absolutely obstruct what the majority is doing. Issues of public policy should be decided at the ballot box, not by the manipulation of archaic procedural rules.

The truth is that neither party should be afraid of majority rule, afraid of allowing a majority of the people's representatives to work its will. After ample protections for minority rights, the majority in the Senate, whether Democratic, Republican, or a bipartisan coalition, duly elected by the American people, should be allowed to carry out its agenda, to govern, and to be held accountable at the ballot box.

I wish to conclude by noting that it is often said—and it is true—that the power of a Senator comes not by what we can do but by what we can stop. That is true. The Senate is a body in which one individual Senator has an enormous amount of power to stop things. No one wants to give up that power. But I believe it is time for us Senators to take a look at ourselves. For the good of the Senate and, more importantly, for the good of the country, we need to give up that power—not all of it but a little bit of it. I am willing to give it up.

All Senators should have fundamental confidence in democracy and the good sense of the American people. We must have confidence in our ability to make our case to the people and to prevail at the ballot box. We must not be afraid of democracy. I am not afraid of it. I, quite frankly, believe my ideas, my support of certain measures, is more widely supported by the American people than my friends on the other side of the aisle. They believe just the opposite. That is good. That is the way we should operate here in grinding out legislation and then at the ballot box every 2 years.

Healthy debate is about the direction of the country and which way we should go. We should have the confidence—the Republicans should have their own confidence and we should have our own confidence—in our ability to make our case to the people and to prevail at the ballot box. I say: Don't be afraid. Don't be afraid of the American people and their inherent ability to make wise and just decisions. Things may go awry one time or another time, but in the great history of our country, the American people—as Winston Churchill once said: After we try everything else, we always do the right thing—the American people make the right decisions. Sometimes I may not agree with it, but then it is my business to go out and try to convince my constituents and others they made the wrong choice; that we should be going in a different direction.

That is the essence of democracy, not the power of me, a Senator from Iowa, being able to stop what the majority wants to do; not me, just with a handful of other people saying: I don't care what they want to do; we can stop it, put it in the trash can.

All I want is the right to debate, to discuss, to be able to offer amendments that are germane to the legislation. So, again, I am not afraid of living with these reforms, both as a member of the majority party and as a member of the minority party, which I am sure we will once again become at some point in the future.

So, Mr. President, as I have over the last, I guess it makes 17 years now, I come to the floor knowing that my proposal will not win. Well, it hasn't thus far. And that is all right. A lot of times people say: Why do you offer it? You know you are going to lose.

I offer it because I believe so deeply in this, and I believe sometimes you just have to stand for what you believe in, and you have to make your case as forcefully, as intelligently as possible. I hope I have done that both in my words and in my statement and in the past debates I have had on this Senate floor that occur about every 2 years when the Senate convenes.

I don't carry this beyond the first day of legislative business. I don't think we should. If we set the rules down on the first day, after that I don't think we should be changing the rules in the middle of the game. But we are still in the first legislative day, and I think now is the time to do this.

Mr. President, before I yield the floor, I know our distinguished minority and majority leaders have been working hard on some reforms on the filibuster. I am not privy to all of that. I don't know exactly all the details of it, although it was discussed in our policy caucus today. But I will say this about it—at least what I understand to be the essence of the reforms that our majority leader has worked so hard on—it is better than what we have right now. From what I understand—and I don't know all the details—it is a step in the right direction.

I want to make it clear that I might vote for it—as soon as I find out exactly what it all is. I might vote for it because it is probably better than what we have right now. But I just want to be clear that my vote for that does not signify that I prefer that over doing away with this absolute 60-vote threshold because under the reformed rules that I understand are being promulgated by the majority and minority leaders, we still have a 60-vote threshold on anything except for the motion to proceed.

So on any amendment, any bill, we still have 60 votes. So a small group, a handful, can still put bills and amendments and everything else in the trash can. I just fundamentally disagree with that. So if I do vote for that—like I say, I probably will—it is because it looks like it might be better than what we have now.

I know it is tough. I do not denigrate for one minute the effort and the work of the majority leader and the minority leader in trying to reach these agreements. These are tough things. I just think we have to be more forthright in constantly—every 2 years—going after this idea that somehow this dead hand of the past that says we need a two-thirds vote to change the rules and that somehow that controls us—it shouldn't; it doesn't control us—that somehow we have to adhere to this 60-vote threshold forever. That shouldn't control us.

Every 2 years, according to the Constitution, according to Senator Byrd, according to constitutional scholars of both parties, we have the constitutional right at the beginning of a Congress to change our rules with a majority vote. That is what we ought to be about doing.

So, Mr. President, I look forward to seeing the proposed rules reform the majority leader and minority leader have been working on. Again, I know it is tough to work these things out, but I think this body has to move ahead and do away with that dead hand of the past and provide for rules changes that allow us to function, that allow the majority to act, with the right of the minority to debate, to slow things down and to amend—but not the right to win. I have never said the minority has to have the right to win. But the minority ought to have the right to make their voices and their votes heard in this body.

That is what my proposal would do. Again, as I said, I don't expect it to win, but I want people to be able to express themselves if they believe we should move in that direction, and I offer it in that vein. I know there are those who believe somehow that we have to abide by that two-thirds vote, by this dead hand of the past. I just don't believe so.

Mr. President, with that, I yield the floor.

The PRESIDING OFFICER (Mr. KING). The Senator from Maryland.

EXTENSION OF MORNING BUSINESS

Mr. CARDIN. Mr. President, I ask unanimous consent that the period of morning business be extended until 6:30 p.m. today, and that all provisions of the previous order remain in effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARDIN. Mr. President, first, let me compliment Senator HARKIN for his incredible leadership in bringing to the attention of this body something I think everyone understands; that is, with the procedures of the Senate and the way it is operating today, there is a problem. There is a very serious problem.

All one needs to do is to turn on C-SPAN to see the Senate in a quorum call for hours to know there is a better way for us to operate. All one has to do is to look at a week that goes by where there are very few recorded votes to know there is opportunity for debate and action that is being lost in the Senate. We can do better. The procedures we are following today, the way that is being honored by the Members of the Senate, we need to change the rules and procedures of the Senate.

I want to thank the majority leader and the Republican leader for negotiating and getting together to understand the frustrations that are out there in both of our caucuses and to try to come up with reasonable changes in our rules. I see Senator MCCAIN is on the floor, and I acknowledge his leadership, along with that of Senator LEVIN. I was honored to work with that group, along with Senators PRYOR, SCHUMER, BARRASSO, ALEXANDER, and our former colleague, Senator Kyl. We sat for hours debating, and it was very educational for me, Mr. President, because I listened to the concerns of my Republican colleagues—and it was a lot different than what I heard in the Democratic caucus—and I think we both learned a lot from each other.

But there was general agreement that there is a real problem in the operation of the Senate, and we have an obligation to take a look at our rules and see whether we can't modify the rules so we can have the type of deliberation, debate, and voting that is expected of the Senate.

One of the problems that became very apparent to all of us is that individual Senators are able to block the consideration of amendments and bills on the floor of the Senate indefinitely. That is wrong. My colleague from Arizona pointed out that someone could be in their home State and offer an objection, and a bill could be brought to a standstill. That is not how the Senate should operate. We should be able to consider legislation, and individual Senators should not be able to block the consideration of that legislation.

I could give examples of hundreds of bills that have been reported out of our committees in the Senate that have never reached the floor of the Senate. Quite frankly, the reason is an individual Senator blocked consideration, and it would take the majority leader too much time to go through cloture motions in order to bring those issues to the floor of the Senate.

We also have seen an abuse of the 60-vote threshold. The 60-vote threshold shouldn't be the standard working procedure of the Senate. A simple majority should control our actions. Yet in too many cases we have used the 60-vote threshold in order to move legislation forward.

We have also seen that it is very difficult to bring amendments up for consideration. It has been very difficult to get action on individual amendments on the floor of the Senate. So we need to change our procedures. We need to be the great deliberative body which historically the Senate has been.

I want to compliment many of my colleagues—I already mentioned the group that worked on some suggested rules changes and made those recommendations to the majority leader and the Republican leader—but I also want to thank my colleague, Senator HARKIN, who just spoke, for his leadership on this issue, as well as Senators MERKLEY and TOM UDALL, who have been leaders on this matter. We have brought this to the attention not only of our colleagues but to the attention of the American people, and they expect us to take action to improve the operation of the Senate.

Let me talk a moment about the negotiated agreement between the Democratic leader and the Republican leader—between the majority and minority leaders—and what I understand will be recommended to us very shortly, and I hope we can act on it as early as this evening.

First, one of the frustrations is that we find it difficult to bring a bill to the floor of the Senate in a motion to proceed. The threat of a filibuster on the motion to proceed has denied us the opportunity to even start debating an issue. Under the agreement I expect will be brought forward, the majority leader will have two additional opportunities to start debate on an issue.

First, if the Republican leader is in agreement, they can bring that bill to the floor immediately, without any preconditions. That could particularly work well on institutional issues that need to be dealt with, such as appropriations bills, so that we can get onto appropriations bills a lot sooner than we can today.

There is then another opportunity where the majority leader could bring a bill to the floor without the fear of a filibuster, without having to file cloture, by offering amendments. There would be a guaranteed right to offer up to four amendments: two by the minority, two by the majority. That gets us started on legislation.

Now, it is very interesting, if one looks at the process that has been used where bills come to the floor and where we are most pleased by how the process has worked—such as in the case of the national defense authorization bill, postal reform, and the Agriculture bill in the 112th Congress—in each of those cases the committees voted on the bills, they came to the floor with the managers, we started on the bills, and we completed the bills. I think we were all pretty proud with the manner in which those issues were handled on the floor of the Senate.

Under this process, the majority leader could get us started. The managers can get us started on legislation. Once we start on legislation, once we start debating the issues, we can see what amendments are out there, and we can try to manage the time appropriately and actually get action and debate and votes on the floor of the Senate on the amendments and on final passage.

I do think this empowers our committees. We all spend a lot of time in our committees. We are there for the hearings, we want to see committee markups, but we also like to see the products we bring up in the committee be the major work on the floor of the Senate. Well, now, with this reform and the ability of the leader to bring forward a bill that has come out of our committees, our committee products will be more respected, and we will have a better legislative process because we are using the products that come out of our committee. We are respecting the work of our committees. We are rewarding our chairmen and ranking members working together and bringing legislation to the floor of the Senate.

I think that is a real major improvement and something that will allow the Senate to operate in the way it should.

We also allow for conference committees to be formed in a more expedited way. Right now it could take three cloture votes to get into conference. We contract that into one. I think that is going to be the recommendation.

I had the honor in the 112th Congress to serve on a conference committee that dealt with the payroll tax extension. We got our work done, brought a bill to the floor of the Senate and the House, and got it enacted into law because we were able, in a very open and transparent way, to work with our colleagues in the other body, resolve our differences, and bring legislation forward. I might be wrong, but I think that was the only conference committee that operated in the 112th Congress. There haven't been many. I think most Members of this body would be hard-pressed to remember when they last served on a conference committee. Yet we know there are significant differences between the products that come out of this body and the products that come out of the other body. We need to reconcile those differences. Being able to go into conference allows us the opportunity to let

the legislative process work the way it should.

One of the procedures the majority leader is going to talk about is that once cloture is invoked, if you have to use cloture, you have 30 hours. But you don't guarantee 30 hours. That 30 hours is the maximum. Each Member is entitled to only 1 hour to speak, and a quorum call during postcloture can be considered dilatory if we have already established a quorum.

The majority leader and the minority leader are going to talk about the fact that postcloture, if you want to speak, come to the floor and speak. If you don't, the Presiding Officer should put the issue to the membership for vote so we can expedite issues and not waste a full day letting the 30 hours expire.

There will also be recommendations to deal with nominations. We were extremely frustrated. I served on the Judiciary Committee. I had the opportunity to recommend to the President several appointments to the Federal bench. It took months for these noncontroversial nominees to be approved on the floor of the Senate. It truly affects our ability to recruit the very best to serve on our courts.

The same thing is true with the President on his team to have in place, and there will be recommendations to shorten the postcloture time if a cloture vote is needed on judicial nominations to, I think, 2 hours, and sub-Cabinet appointments to around 8 hours. That allows the leader to be able to bring these issues to the floor without the threat that it would tie us up for weeks to take up just a couple appointments.

These are all major improvements. Let me make it clear. If I were writing the rules of the Senate, I would go a lot further. I know I might be in the minority in this body, but I happen to believe in majority rule. I happen to believe the majority should make the decisions. I think there should be adequate time for debate, et cetera. The Senate is different than the House. I accept that. But at the end of the day, I am in favor of majority rule. But I am also in favor of trying to get our rules done in a bipartisan manner because, quite frankly, the Democrats may not be in the majority forever.

If we look since 1981 through the end of this Congress, but for Senator Jeffords' decision in May of 2001 to become an Independent and caucus with the Democrats, the Senate would have been divided as follows: Sixteen years under Democratic control, 16 years under Republican control, and 2 years split 50–50.

I think it is very important we all understand these rules need to work regardless of which party is in the majority. That is why it is the right thing to do to negotiate between the Democrats and Republicans rules that can withstand the test of time and be fair to both the majority and the minority.

Once again, I would have majority rule. That is what I believe and I know there will be a chance to vote on that and that is how I will express my vote. But I do believe it is best for us to work together, Democrats and Republicans, and come together with a true compromise on the rules changes. I think that is exactly what Leader REID and Leader MCCONNELL have done. They have taken the recommendations of many of us, they have listened to a lot of us, they have listened to both caucuses, and they will come forward with recommendations that will allow this body to carry out its responsibilities in a more effective way—in a way that is better understandable to the American people, where we can get on legislation a lot sooner, debate issues a lot quicker, take up amendments and actually vote on amendments and be able to move legislation that comes out of our committee and approve nominations in a much more efficient way.

To me, that gives us an opportunity for a new start in the Senate as we begin the 113th Congress. Let's hope the cooperation we see developing on the changes of the rules will allow us to work together to deal with the problems of the Nation in a more collegial way, recognizing that compromise is how this country was formed, listen to each other, and move legislation in the best traditions of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, before the Senator from Maryland leaves the floor, I would like to tell him how much I appreciate the remarks he just made. I think he gave a very accurate depiction of the agreement we reached after many hours of always pleasant conversation. The fact is we showed our colleagues and many others it is still possible for a group of us to join together on a very difficult issue and a very complex one.

The Senator from Maryland stated his preference just a minute ago that he is for majority rule. But he also understood that in order for us to come together, that we had to move—each of us—in a more centrist direction. Without his input, his efforts, and his willingness, in my view, it is very likely we would not have agreed.

I ask unanimous consent that the Senator from Maryland and I engage in a colloquy.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. I think the Senator from Maryland and I would agree that even though this is not a headline-grabbing issue and a lot of people in America have no real idea what was at stake, that if we hadn't reached this agreement amongst us, it could have had repercussions for a very long period of time in the Senate; would the Senator agree to that?

Mr. CARDIN. I certainly agree with my friend from Arizona. They may not have understood what caused the problems, but when they see the type of gridlock where the Senate can't take up amendments for 1 week or can't take up a bill for 2 weeks or debating how to proceed on a motion to proceed, not only on substance, they wonder what is going on here. So the Senator is absolutely right.

Also, we are going to be in a much better start to this Senate with Democrats and Republicans agreeing on the rules collectively. That is certainly a better place for us to start to work with this Congress, and it gives us the opportunity to work together with more confidence, beyond just rules but also dealing with the difficult issues this country faces.

Mr. MCCAIN. Wouldn't the Senator from Maryland agree that the whole purpose of this is not to block? In fact, with our numerous meetings with the Parliamentarians, I think we reached a greater and fuller understanding that if someone really, really wants to block progress in the Senate, given the incredible—if the word isn't "arcane," it is certainly "detailed"—rules of the Senate, they can.

But the real purpose of this and the outcome that the Senator from Maryland and I and Senator Kyl, Senator BARRASSO, Senator LEVIN, Senator SCHUMER, Senator PRYOR—and I note the presence of the Senator from Michigan on the floor; I think he would agree that this fix, this compromise we have all now agreed to—and hopefully we will agree to and pass shortly—is also intended to change an attitude in the Senate.

Instead of blocking everything moving forward and blocking amendments, perhaps we could create a new environment in the Senate where we will let the minority have their amendments, but also the minority party will let the process move forward. I think that is the tradeoff that was the fundamental aspect of the negotiations we continued in the office of the Senator from Michigan for many days and many hours.

I think the Senator from Michigan and the Senator from Maryland would agree; if someone wants to block the Senate from moving forward, they can at least do it for some short period of time. What has happened, looking back 10, 15 years ago, the tree wasn't filled. But at the same time, on the other side, amendments were not produced by the hundreds. I believe the object and I believe the outcome of this hard-earned compromise will be that there will be a greater degree of comity in the Senate which would allow us to achieve the legislative goals that all of us seek.

I ask unanimous consent that the Senator from Michigan join the Senator from Maryland and me in this colloquy.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, first, let me thank my dear friend from Arizona for helping to lead this bipartisan effort, where eight of us spent weeks to

try to come up with a bipartisan proposal to our leaders. Senator CARDIN was one of the eight, and I am grateful to him and to all the eight Members, including one who has now left, Senator Kyl.

Its purpose was twofold. The first purpose was to address the specific hurdles that have created gridlock, the specific mechanisms which have been overused in this Senate that have led to gridlock. There are a number of things that have led to gridlock, but the most significant problem we have faced is the excessive use of the threat of the filibuster on the motion to proceed to a bill.

The reason it was used—according to many Members of the minority—was because of a fear that the tree would be filled by the majority leader and then there would be no opportunity to offer amendments. So what the eight of us strived to do was to find a balance where we could protect the minority's rights to offer some amendments at the same time that we finally got rid of a roadblock which was being abused, which was a threat to filibuster a motion to proceed. So we devised this approach which is now part of the leadership proposal to do exactly that.

The other purpose is the one which my friend from Arizona has just identified; that if we could come together, the eight of us, four Democrats and four Republicans—Senator SCHUMER is now on the floor and he was one of the eight. If we could come together and come up with a bipartisan proposal on this issue, we could hopefully begin to change the dynamic that has so divided this Senate. That is, hopefully, a very important and, I hope, successful outcome of those discussions and of the leadership then coming together, because those two leaders have to come together if this Senate is to come together and be able to move legislation in the ordinary course.

I agree with Senator MCCAIN's assessment as to the second goal we had, which was to show that on the thorniest procedural issue we face, that four Democrats and four Republicans, meeting in a very thorough and personal way, without a lot of staff around, could find a way through this procedural thicket and then make recommendations to the majority and to the Republican leader. I do agree with the Senator from Arizona.

Mr. MCCAIN. I think my friend from Maryland would also agree that we have found, for example, on the Defense authorization bill, that once we get onto a bill and once we have some amendments—in the case of our agreement it was four—that now the Members are sort of invested in moving the process forward. The logjam has always appeared before the bill is ever taken up for debate and amendments. By expediting that process, without depriving Members of their rights but expediting that process, hopefully, we will get onto the bill and some amendments that are already—four in one option—are already agreed to, and then we can move forward.

I would like to point out one other thing, and I think my two colleagues would agree; that is, we are fairly well paid around here, and maybe sometimes we should work a 5-day workweek; and maybe, if absolutely necessary, God forbid, a 6-day workweek. We should be taking up legislation and completing that legislation before the end of the week or, depending on how massive the legislation is, at least 2 weeks. But there should be dates certain. It is funny how this body operates when there are deadlines as opposed to just extended periods of debate and amending.

Mr. CARDIN. Could I inquire because I want to use the two Senators as the example. They did that on the Defense Authorization Act. They were able to get the bill to the floor. They started on the bill, had a little rough start, but started on the bill and then set up a series of votes. We were able to vote on I don't know how many amendments. But it is interesting, if my memory is correct, there was no requirement for a 60-vote threshold on any of those amendments. You voted them all on majority so there was no need for a cloture vote because we started on it and people believed the process was fair. They had the opportunity, they had a chance to debate. So we had full and open debate on many issues.

National defense authorization opens a whole host of issues which are very controversial: What do we do with detainees? What do we do with our civil liberty rights? What do we do with our troop levels? There were a lot of issues that could have divided us, and we had the type of debate that I think was in the best interests of the Senate and we completed that bill in a timely way.

I think the way the two Senators were able to come forward—there are a lot of other committees. I serve on the Senate Foreign Relations Committee. We talked today, yesterday, during—Senator MCCAIN is also on that committee. We talked—Secretary Clinton—wouldn't it be nice to get a State Department authorization bill on the floor of the Senate?

Mr. MCCAIN. It is a disgrace that we have not—in how many years?

Mr. CARDIN. A long time. Certainly, I have not been in the Senate since that happened. But I do think now we have a better opportunity. If our committee could mark up a Defense authorization bill—and maybe it would take a week or two. Maybe we would have to work Friday or Saturday to get it done, but we should do that. But we now have the opportunity for the leader to bring that to the Senate floor immediately and allow the amendment process to start. Once it starts, normally we can get the type of consideration by all of us as to a reasonable number of amendments, and we can get the bill, hopefully, through the Senate. That is what I think is the real plus of the type of reforms we are talking about that allow the right legislative process to work.

As I said, it doesn't cover everything I wanted to cover. I would have gone further. But I do think it does give us a chance, allows us to do our work in the way that we should.

Mr. MCCAIN. I, again, would like to express my appreciation to Senator SCHUMER and Senator CARDIN, Senator PRYOR and my Republican colleagues, Senator Kyl and Senator BARRASSO. But I would especially like to thank Senator LEVIN. We have known each other and worked together now for many years. We had very spirited and open and honest disagreements, but there is a level of trust and friendship that allows us, when committed to the same goal, to be able to—I believe, hopefully, in a very short period of time—achieve it.

Maybe I am being a little bit too optimistic. Hopefully, because of this, we can start moving legislation through the Senate. The record that we have achieved over the last 2 years is less than admirable. We know that filling the tree has dramatically increased, but we also know the objections to moving forward also have. I am not placing any responsibility on either side. I am placing the responsibility on both sides. Maybe we can start a new day, take up some legislation, pass it, and do the people's will. Maybe we would improve our favorability ratings to exceed that of—I saw a poll the other day; I don't know if my colleagues did. A colonoscopy is more favorable than Members of the Congress. I don't know if they saw that.

I hope we can at least raise it to some level above that. By getting things done around here I think that will probably enhance our chances of regaining some more favorability amongst the American people.

Again, I thank the Senator from Maryland and my friend from Michigan and, hopefully, in a couple of hours we will have achieved something that, in my view, could avert a fundamental change in the Senate which maybe could never have been repaired. I view it with the utmost seriousness. I have never been involved in an issue that impacted this body to the degree that the nuclear option would have caused. We would have regretted it for a long time. Hopefully, in a few hours we will have avoided it.

I just want to remind my friend from Maryland and the Senator from Michigan, this is going to be for 2 years. So we are in kind of an experimental phase. If we are unable to do the things that we aspire to, then I think you could see further Draconian measures considered by the majority. It is up to both sides to make this work.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first of all, let me comment on what Senator CARDIN said about one of the purposes of this effort, which is to get a bill to the floor so the managers can work on it.

As we have proven in the last couple of months on a number of bills, and the Senator has pointed this out, if we can get the bill to the floor for the managers to be able to work with our colleagues on amendments, we can legislate. The problem has been that we have not been able to get bills to the floor because of this blockage, the blockage caused by the overuse of the filibuster and, more accurately, the threat of a filibuster on the motion to proceed, which, in turn—and my Republican friends believe this very keenly—was caused by the use of filling the tree, which meant that they would not have the opportunity to offer amendments. So they would then use that threat of a filibuster in order to try to gain assurance that they would be able to offer some amendments.

That is the heart of the compromise we proposed. There are a lot of other aspects to it, including trying to get rid of these filibusters on going to conference; including these filibusters that tied up nominations with postcloture 30-hours, nominations that were going to pass with votes of 90 to 0.

There are a lot of other parts to the recommendations and what the leaders are recommending to us, but the key thing—and Senator REID said it to us repeatedly—the key thing that this compromise addresses, and it is a bipartisan approach, is trying to overcome that barrier to getting legislation to the floor. We know—the Senator from Maryland has pointed out and Senator MCCAIN knows it because we have lived it—if you can get a bill to the floor with managers, they can work out amendments, sometimes by the hundreds.

I think Senator MCCAIN and I probably had over 100 amendments filed to our bill.

Mr. MCCAIN. I think it was about 383.

Mr. LEVIN. OK. I am glad I exaggerated in the downward direction. In any event, we were able not to work through all of them but to deal with that challenge, to probably deal with about 100 of them, as I remember. We did it in about 3 days.

That doesn't mean we are magicians. It means we are capable, all of us are capable, if we can get the bill to the floor. Particularly when the bill has come out of committee with broad bipartisan support, we can get bills passed here. So the heart of what we have proposed to the leadership, this group of 8, and what they have adopted and incorporated in their bipartisan approach to the Senate and to the country, is exactly what Senator CARDIN has talked about: getting bills to the floor. We can then watch the momentum work.

I want to add one other thing. Senator MCCAIN just made reference to it. That has to do with the so-called nuclear option, or the constitutional option, depending on what your view of it is. I have always believed the threat of that option was troublesome. I was troubled by it because it is inconsistent with the rules of the Senate which require a two-thirds vote for amendments to the rules and because we are a continuing body, not just by our rules but by even a Supreme Court opinion which so ruled.

I believe if the constitutional or the nuclear option were utilized here, if we ended up with the utilization of that option, that what we now have, which is gridlock, would have resulted instead in a meltdown. I want to remind my Democratic friends and folks around the country that not too many years ago when the Republicans threatened to use a constitutional option, the reaction on this side of the aisle was intense. The words of Senator Kennedy, Senator BIDEN, Senator Byrd resonated through this Chamber in strong opposition to the use of a nuclear option.

I have just a few examples of what our reaction was on this side of the aisle when there was a threat to use the nuclear option when it was threatened relative to judges. What I am not going to do tonight is go through the history of the constitutional or the nuclear option, what happened over the century when it has been threatened, how it has not been adopted by the Senate. It is a long, detailed history.

I know some of my colleagues have argued that the constitutional option is based on the Constitution. It is very much the opposite in terms of the history of this Chamber and the rejection of any idea that the Constitution somehow requires that at the beginning of a session of a Senate that rules can be amended by majority vote. It is a long history.

I want to just quote, if I can find these quotes, what the reaction was on this side of the aisle when there was a threat on the Republican side of the aisle to use this approach of getting a ruling from the Chair, somehow, that the rules, although they say they can only be amended by two-thirds, can in fact be amended by a majority.

EXTENSION OF MORNING BUSINESS

Mr. LEVIN. Mr. President, while I am looking for these quotes, let me ask unanimous consent the period for morning business be extended until 7 p.m. today and that all provisions of the previous order remain in effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

I wish to quote Senator Byrd as to what he said when the actual issue was before the Senate. He said:

> Now, if we go down this road—

That is the road which says rules can be adopted by a majority vote, even though the rules say it takes 67 votes.

He said:

> Now, if we go down this road, I can guarantee that every Senator in this body will rue this day . . . Senators, do we want to do it this way? If this is done today, it can be done any day. If it can be done on the constitutional question, it can be done on any other constitutional question. It can be done on any other point of order which the Chair wishes for the Senate for decision . . . I believe that there is a danger here that, if Senators will reflect upon it for but a little while, they could foresee a time when they say that we went the wrong way to achieve an otherwise notable purpose . . . Put this power in the hands of a tyrannical leadership, and a tyrannical majority of 51 Senators, and we are going to be sorry on both sides of the aisle.

This is what Senator Inouye said in his maiden speech in this Chamber. They were discussing civil rights legislation. The question was whether there would be a ruling of the Chair which would allow the rules to be changed by the majority vote. This is a Senator who had been discriminated against in probably one of the most dramatic and massive ways that anyone could be discriminated against, being denied freedom because of his Japanese-American ancestry while he was fighting to defend this country.

What he said in his maiden speech was the Senate needs to preserve its protections for minority views, even though those protections allowed a misguided minority to obstruct our Nation's progress.

He supported the civil rights legislation, but he would not allow it to be addressed in violation of the rights of the minority of this body. This is what Danny Inouye said in his maiden speech:

> The philosophy of the Constitution and the Bill of Rights is not simply to grant the majority the power to rule, but it is also to set out limitation after limitation upon that power. Freedom of speech, freedom of the press, freedom of religion: What are these but the recognition that at times when the majority of men would willingly destroy him, a dissenting man may have no friend but the law? This power given to the minority is the most sophisticated and the most vital power bestowed by our Constitution.

He was not willing to end a grave injustice, which is what civil rights legislation would have achieved, by a method that he felt ran roughshod over the rights of the minority. He warned us against the attempts, in his words, "to destroy the power of the minority . . . in the name of another minority."

Mike Mansfield, leader of the Senate, supported a modification in the rule to reduce the number of Senators needed to end debate from 67 to 60. Although he supported the change in the rules, he opposed the use of the nuclear option, or the constitutional option, to achieve it.

This is what Mike Mansfield said in arguing for the reform:

> [The] urgency or even wisdom of adopting the three-fifths resolution does not justify a path of destruction to the Senate as an institution and its vital importance to our scheme of government. And this, in my opinion, is what the present motion to invoke cloture by simple majority would do.

He added:

> I simply feel the protection of the minority transcends any rule change however desirable. . . . The issue of limiting debate in this body is one of such monumental importance

that it reaches, in my opinion, to the very essence of the Senate as an institution. I believe it compels a decision by more than a majority.

Senator Kennedy's words were extremely powerful in this regard. I quoted some of Senator Byrd's words and Senator BIDEN's words vehemently opposing the effort to change the rules of this body by majority vote when the rules themselves provide it takes two-thirds of the vote to amend the rules.

We have to be consistent. The rules cannot just be simply what the majority wants them to be, whatever the current majority is. This is a body that has continuity. It is one of the few bodies in this country that has continuity. The only other one is the Supreme Court.

Two-thirds of us were not elected last November. Two-thirds of us continued from the last Senate. Over the centuries, this body has been looked to as a source of continuity, where the rules cannot be changed at the will or whim of a majority but where the rules stay in place until amended. The rules don't end when a Congress ends, in terms of Senate rules. House rules do because all the House Members are elected every 2 years. Senate rules are permanent until amended or changed. It is critically important that we not say those rules can be modified whenever the majority wishes to modify those rules or else we will lose not just the protection of the minority, which is so critically important to the history and purpose of the Senate, but it is critically important to the very continuity and stability of the Senate.

This is a unique position, where most of us—two-thirds of us—stay from Congress to Congress to Congress. It is not always the same two-thirds, but it is always two-thirds. That has created an institution which is unique in protecting minority rights as well as holding out to the American public that continuity. In the last few years, we have fallen terribly short of what we should be. There are many reasons for that, and I will not go into all of them or even any of them right at the moment. We have fallen terribly short. We have not carried out our duties for lots of reasons; again, most of which, frankly, are not acceptable to me.

We talk about how the filibuster has been abused—and it has been. In part, it has been abused because we, in the majority, have allowed it to be abused. We have not made the filibusterers filibuster. As Senator Byrd put it, it is just the whiff of a threat of a filibuster which has tied up the Senate. It doesn't have to be that way, and it should not be that way.

I see Senator ALEXANDER is here. He is such an important part of this group of eight.

What has happened is that eight of us came together with a very specific purpose. There were four Democrats and four Republicans. I have mentioned everybody who was in that group already. We came together to try and see if we could get through this thicket, where we have this threat of a filibuster on the motion to proceed which takes weeks to dispose of. What that means is it has been a huge problem in terms of getting things done.

Eight of us got together and said: Let's just reason together and see if we cannot get rid of the roadblock and the abuse of the threat of a filibuster but protect the rights of the minority at the same time to offer amendments. As I said before, it was that which drove many Republicans to use that threat because of the fear the tree would be filled and there would be no opportunity to offer amendments. Unless there was some assurance that there could be amendments offered, they then stood their ground and said: We are not going to proceed to that bill unless there is some assurance in terms of amendments. It is that balance that we struck, and that is where the two amendments on each side came from and where some of the suggestions we made to the majority came from.

I wish to thank Senator ALEXANDER and all the other Members. I am going to repeat the names of this group who spent so many hours together to try and come together not just to solve the problem of getting through this thicket, but also to help restore a climate in the Senate which might help us be more fruitful in our work.

Again, I wish to thank Senators MCCAIN, SCHUMER, KYL, KIRK, ALEXANDER, PRYOR, and BARRASSO for all the work they put in on this bipartisan proposal to reform Senate procedures.

I ask unanimous consent that the bipartisan proposal we made to the leadership—and which they have embraced in large measure in their own extraordinarily important effort to offer the Senate and the Nation a bipartisan approach of getting through this rules morass—be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BIPARTISAN PROPOSAL TO REFORM SENATE PROCEDURES

We propose the Senate adopt a Standing Order at the beginning of the next Congress, which would provide two additional alternatives to the existing rules for the Majority Leader to proceed to the consideration of a measure on the Senate Calendar. It also streamlines procedures relative to going to conference and consideration of nominations. The two additional methods for the Majority Leader to proceed, at his option, would sunset at the end of the 113th Congress. The current rule relative to proceeding to a bill would remain an option. We also propose a number of recommendations relative to current practices and comity including that the Leaders inform their conferences that existing rules which require Senators to come to the floor to debate or object to a matter will be enforced.

HIGHLIGHTS

Two Additional Methods for the Majority Leader to Proceed, at his option

(1) No filibuster of the motion to proceed (debate on the motion would be limited to 4 hours, equally divided.) The amendment tree could not be filled at the time the Senate proceeds to the consideration of such bills where this option is used. The process by which this option would be implemented is in attachment A. It includes a guaranteed amendment at the beginning of the bill's consideration for each of the following in the order indicated: the Minority Manager, the Majority Manager, the Minority Leader and the Majority Leader. (Those amendments would not be subject to amendment or division.)

(2) When a cloture motion is filed that is signed by both the Majority Leader and the Minority Leader on a motion to proceed, and where the cloture motion is signed by at least five additional Senators from each caucus, the motion ripens after two hours of debate, equally divided and, if cloture is invoked by three-fifths affirmative vote, there will be no post-cloture debate.

Going to Conference

(3) All three initial motions relative to going to conference (insist, request, appoint) would be collapsed into one nondivisible motion. Cloture on such a motion would ripen after up to two hours of debate, equally divided, with no post-cloture debate if cloture is invoked.

Nominations

(4) The list of nominees subject to the current expedited process of putting nominations directly on the Calendar (S. Res. 116, 112th Congress) unless a nomination is objected to by any Senator would be expanded by 531 nominations leaving 448 nominations to go through the traditional committee review process. Committee Chairs and Ranking Members would be able to strike nominations from the list of 531 before the Standing Order is put to a vote.

(5) A cloture motion on nominations would ripen after up to two hours of debate, equally divided, with no post-cloture debate if cloture is invoked. This change would not apply to Cabinet Officers, Cabinet-level Officers, or Article III judges. However, relative to district court nominations, post-cloture consideration would be limited to 2 hours.

CURRENT PRACTICES AND COMITY

In addition to the adoption of the Standing Order, the leaders, at their respective conference meetings, should address changing some practices to make the Senate operate more efficiently. They should notify their members about the following:

Leaders and bill managers should not honor requests to object or threats to filibuster on behalf of another Senator unless, after reasonable notice, that Senator comes to the floor and exercises his or her rights himself or herself. This also applies to all objections to unanimous consent requests. Members should be required to come to the floor and participate in the legislative process—to voice objections, engage in debate, or offer amendments.

When the two cloakrooms send out hotlines agreed to by the two leaders, any Senator may object, but the Senator should lose his or her objection if, after appropriate notice, the Senator fails to object to the request on the floor the next session day.

Rule XXII makes provision for 30 hours of debate after cloture is invoked. Within the 30 hours, Senators have strict limitations on the amount of time each Senator is allowed to speak. These limits should be enforced by the leaders and bill managers. Rule XXII further says, "After no more than thirty hours of debate . . .", so 30 hours will be considered the outside limit of post-cloture debate time.

When the Majority Leader or bill manager has reasonably alerted the body of the intention to do so and the Senate is not in a quorum call and there is no order of the Senate to the contrary, the Presiding Officer

may ask if there is further debate, and if no Senator seeks recognition, the Presiding Officer may put the question to a vote. This is consistent with precedent of the Senate and with Riddick's Senate Procedure, 1992. (See p. 716; see also footnotes 385 and 386 on p. 764) This can be done pre-cloture or post-cloture on any amendment, bill, resolution or nomination.

ATTACHMENT A

(1) The first amendments in order to any measure shall be one amendment for each of the two Leaders and two Managers. Such amendments shall be offered in the following order: Minority Manager, Majority Manager, Minority Leader, Majority Leader. If an amendment is not offered in its designated order, the right to offer the amendment is forfeited.

(2) Each paragraph 1 amendment must be disposed of before the next amendment may be offered.

(3) Paragraph 1 amendments are not subject to amendment or division.

(4) Each paragraph 1 amendment, if adopted, would be considered original text for purpose of further amendment.

(5) No points of order would be waived by virtue of this procedure.

(6) No motion to recommit shall be in order during the pendency of any amendment offered pursuant to paragraph 1.

(7) Notwithstanding Rule XXII, if cloture is invoked before all paragraph 1 amendments are disposed of, any amendment in order under paragraph 1 but not considered upon the expiration of post-cloture time may be offered and is guaranteed up to 1 hour of debate, equally divided.

Mr. LEVIN. Our proposal was born out of the sincere belief that, even in today's hyper-partisan environment, it is still possible for Senators from both parties to work together to restore the deliberative traditions for which the Senate was once known. It took many days of discussions over two months among our group to reach an agreement we could present to our Leaders. We looked past our frustrations with the recent practices of the Senate and acted together for the sake of this vital institution. I would also like to thank our former and current Parliamentarians, Alan Frumin and Elizabeth MacDonough, who answered our questions and provided their expert advice throughout our discussions.

Perhaps the most significant reform in the bipartisan leadership proposal, as in our bipartisan proposal to the leadership, is a reform designed to end the abuse of the threat of a filibuster on the motion to proceed to a bill—that is, the abuse of the Senate's minority protections to obstruct the Senate from even taking up and debating legislation. Reform in this area is vital, because abuse of the rules on the motion to proceed has prevented the Senate from engaging in what our rules are supposed to promote: Debate of the important issues our nation must face. Over the previous two Congresses, we have had to hold 59 cloture votes on motions to proceed, and the very threat of the filibuster on the motion to proceed has on countless occasions derailed the Senate's legislative process. Reforming the procedures regarding the motion to proceed will allow this body to deliberate as it is intended to do.

The proposal before us will give the majority leader two alternatives to the method in the existing rules for proceeding to a bill. The first alternative, in the form of a standing order effective for the 113th Congress, would limit debate on the motion to proceed to 4 hours. When used by the majority leader, this alternative would guarantee consideration of some minority amendments. Specifically, two amendments each for both the majority and the minority would be the first amendments in order at the beginning of consideration of a measure. The order of those amendments would be the first minority amendment, the first majority amendment, the second minority amendment, and the second majority amendment. Each amendment would need to be disposed of prior to the offering of the next amendment in order. These amendments would not be subject to amendment or division, and if adopted, the amendments would be considered original text for purpose of further amendment. They could be tabled or filibustered. If an amendment is not offered in its designated order, the right to offer that amendment would be forfeited. Filing deadlines would occur on these amendments if a cloture motion is filed. If cloture is invoked, any of these amendments not offered prior to the expiration of post-cloture time could be offered and would be guaranteed up to 1 hour of debate.

The second alternative would allow the Senate to move quickly when both the majority and minority leaders agree we should proceed to a matter. Specifically, where eight Senators from each side, including the two Leaders, sign a cloture petition on the motion to proceed to a measure, then the cloture vote would occur the day following the filing of the motion with no post-cloture debate if cloture is invoked.

The bipartisan proposal before us would also reform the process of going to conference by collapsing the three motions currently required by the rules to be adopted in order to go to conference into a single motion and shrinking the cloture process on that conference motion from 30 to 2 hours. This change would be in the form of an amendment to the Standing Rules, and was part of our bipartisan group's recommendations to the leaders.

In addition, the proposal before us would reform the consideration of nominations. First, for district court nominations, it would reduce post-cloture time from 30 to 2 hours, as recommended by our bipartisan group of eight. Second, it would shrink the cloture process on subcabinet nominations by reducing post-cloture time from 30 to 8 hours. This change would be in the form of a standing order and would be effective for the 113th Congress.

When a few Senators threaten to filibuster or object to proposed unanimous consent agreements, those Senators should have to come to the floor to speak or object. Our bipartisan group's reform proposal urged the leaders to give notice that the existing rules of the Senate will be used more vigorously to force filibusterers to show up on the Senate floor to speak, and their colloquy on this matter reflects the leaders' intention to do so.

This proposal includes reasonable protections for the minority, and it reforms our procedures in ways that can end the gridlock that bedevils us. And as it accomplishes those important reforms, this proposal allows the Senate to avoid a process that would break the rules of the Senate and do untold damage to this institution. Amending our procedures in this way, without use of the nuclear option, avoids having the Senate go from gridlock to meltdown. I want to spend some time discussing this process because the issue is extremely important and not fully understood.

The greatest difference between the Senate and the House of Representatives is the approach to minority rights. Senate rules protect the rights of the minority and the House rules do not. With those rights, a minority or even a single Senator can influence the legislative process. Without those rights, a simple majority can render a minority irrelevant and powerless to influence the legislative process.

The current Standing Rules of the Senate spell out clearly the process by which the rules of the Senate may be amended. Rule 5 states that the rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules. Rule 22 states that an affirmative vote by two-thirds of the Senators present and voting is required to end debate on a proposal to amend the rules.

Some Senators have argued that the Constitution empowers a simple majority of Senators to force a change in the rules at the beginning of a Congress, although the change would occur in violation of rule 5 and rule 22. Supporters of this position refer to this procedure as the "constitutional option." Others, including many of us who have served here for longer periods of time in both the majority and in the minority, refer to it as the "nuclear option" because we can see the damage this procedure would do to the Senate. Indeed, many of us who are deeply concerned about its use vehemently opposed Republican threats to use this procedure in 2005.

How worried were we in 2005? Senator Kennedy was worried enough to tell his colleagues: "By the time all pretense of comity, all sense of mutual respect and fairness, all of the normal courtesies that allow the Senate to proceed expeditiously on any business at all will have been destroyed by the preemptive Republican nuclear strike on the Senate floor . . . They will have broken the Senate compact of comity, and will

have launched a preemptive nuclear war."

And here's what Senator BIDEN said on this floor: "I say to my friends on the Republican side: You may own the field right now, but you won't own it forever. I pray God when the Democrats take back control, we don't make the kind of naked power grab you are doing."

Why were our esteemed former colleagues so concerned about walking this path? Here are some of the dangers inherent in the "constitutional" or "nuclear" option, and some explanation of why and how the Senate has consistently rejected this approach in the past.

Supporters of the nuclear option claim a simple majority of Senators can force a rules change at the beginning of a Congress, but do not argue that they can do so at other times. There is no basis for the argument that the beginning of a Congress enjoys a special status for rules adoption or amendment that the remainder of a term of Congress does not. If the Constitution grants a simple majority of Senators the right to amend the rules of the Senate at the beginning of a Congress, when and how does that majority lose that right? This temporal distinction cannot be found anywhere in the Constitution. Article I, section 5 of the Constitution says that each House may determine the rules of its proceedings. It makes no distinction as to when.

That provision of the Constitution, which governs the Senate, also governs the House. The House adopts its rules at the opening of every Congress, but it can and does amend its rules in the middle of a Congress. If the Constitution grants a simple majority of Senators the power to adopt rules, what would stop that simple majority from amending those rules in the middle of a Congress, just as our House colleagues do? And if that is the case, the Senate would no longer be able to fulfill its historic distinction of protecting the rights of the minority.

Some supporters of the constitutional or nuclear option claim that rule 22's supermajority threshold to end debate on a proposed rules change is unconstitutional because it inhibits the Senate from exercising its constitutional power to determine its rules under article I, section 5.

But the power to set its own rules is just one of the many powers granted the Senate by the Constitution. For instance, the Senate is empowered to provide advice and consent on nominations and to consider legislation to collect taxes, to pay the nation's debts, to provide for the common defense and general welfare of the United States. Yet, filibusters have delayed or prevented the Senate from acting on those important measures and nominations that fall within the Senate's constitutional duties.

In testimony before the Senate Rules Committee, CRS expert Stanley Bach argued:

> Adopting and amending its own rules is not the only thing, and arguably not the most important thing, that the Constitution empowers and expects the Senate to do. If filibusters are unconstitutional because they impede the Senate in its efforts to exercise its authority under section 5 of Article I to adopt or amend its rules, then why are filibusters constitutional when they impede the Senate's efforts to exercise its equally or more important authority under Article I, especially section 8, to legislate on matters committed to it and the House of Representatives?

In other words, if the filibuster of a rules change is unconstitutional, as nuclear option advocates contend, then a filibuster on any matter would also be unconstitutional because it would delay or prevent the Senate from discharging its constitutional duties. So by declaring the filibuster unconstitutional on a rules change, advocates of the nuclear option are thereby swinging the door wide open to eliminate the filibuster altogether from the Senate.

Some supporters of the nuclear option say that the Founders never intended for the Senate to have filibusters. They claim that the original Senate's rules included a motion for the previous question, which they further claim was used to end debate and bring a matter to an immediate vote. So, they argue, the early Senate supported the ability to close debate and bring a matter to immediate vote by simple majority vote.

The problem is that they have their history wrong. The early form of the motion for the previous question is unlike its modern day version. In the first Congress, both Chambers had a motion for the previous question in their rules—the Senate dropped the motion from its rules in 1806. But the early version of the motion was not used to bring a question to an immediate vote. The motion, which was phrased "shall the question be now put," was used to suppress or postpone a question. It was moved by Senators who would then vote against the motion in order to suppress or postpone the pending question.

The modern day version of the motion for the previous question in the House serves as a simple majority cloture device. However, in the early House, just as in the Senate, if the motion for the previous question was decided in the negative, then the question was suppressed and the House moved on to other business; if the motion was decided in the affirmative, then the House would continue debate on the pending question, not immediately proceed to a vote. That practice continued until 1811, when a new precedent was set that the motion, when agreed to, would immediately end debate and bring a vote on the question. That was the origin of simple majority cloture in the House.

The early history of the motion for the previous question is set forth in the House of Representatives official guide to procedure, House Practice: A Guide to the Rules, Precedents and Procedures of the House:

> In early Congresses, the previous question was used in the House for an entirely different purpose than it is today, having been modeled on the English parliamentary practice. As early as 1604, the previous question had been used in the Parliament to suppress a question that the majority deemed undesirable for further discussion or action. The Continental Congress adopted this device in 1778, but there was no intention of using it as a means of closing debate in order to bring the pending question to a vote. Early interpretations of the rule in the House were consistent with its usage in the Continental Congress. (House Practice, page 690)

Just as in the House, the early Senate rules had a motion for the previous question, which, just as in the House, was used only to end debate and move to another matter, not put a question to an immediate vote. This motion was eventually dropped from the Senate rules. In his speech to the Senate on March 2, 1805, Vice President Aaron Burr recommended changes to the rules of the Senate. Among those, he suggested that the Senate drop the motion for the previous question on the basis that it was duplicative to the motion for indefinite postponement. The diary of John Quincy Adams contains the following account of Burr's speech:

> He [Burr] mentioned one or two of the rules which appeared to him to need a revisal, and recommended the abolition of that respecting the previous question, which he said had in the four years been only once taken, and that upon an amendment. That was proof that it could not be necessary, and all its purposes were certainly much better answered by the question of indefinite postponement. (Memoirs of John Quincy Adams, edited by Charles Francis Adams, vol. I, p. 365)

Supporters of the nuclear option often reference advisory opinions and rulings by Vice Presidents Nixon, Humphrey, and Rockefeller that the Senate may adopt its rules by simple majority vote at the opening of Congress. These advisory rulings and opinions were rendered during actual attempts to change the rules, but the proposed changes were rejected, for good reason.

For example, Vice President Nixon believed the constitution granted a simple majority of Senators the power to force a rules change in violation of Senate rules. In 1957, when an attempt to change the rules was made at the beginning of a new Congress, Nixon made reference to his belief, but his advisory opinion recognized no special status for the beginning of a Congress. Nixon believed a simple majority of Senators could amend the rules at any point during a Congress. In his advisory opinion, Nixon said, "The Constitution also provides that 'each House may determine the rules of its proceedings.' This constitutional right is lodged in the membership of the Senate and it may be exercised by a majority of the Senate at any time." Vice President Nixon also acknowledged that his opinion was merely advisory, and not binding upon the Senate.

Vice President Humphrey advised the Senate in 1969 that if a simple majority of Senators, but fewer than the two-

thirds required by the rules, voted to invoke cloture on a proposed rules change, then he would rule that cloture had been invoked. On January 16, 1969, the Senate voted 51–47 in favor of a motion to invoke cloture. Vice President Humphrey ruled that cloture had been invoked by the majority. Humphrey's decision was appealed and the Senate reversed Humphrey's decision by a vote of 53–45. In doing so, the Senate established a clear precedent rejecting Vice President Humphrey's ruling that a simple majority could end debate.

Supporters of the constitutional argument point to statements by Vice Presidents Humphrey and Rockefeller in 1967 and 1975, respectively. In both these instances, the Vice Presidents advised the Senate that tabling a point of order against a motion to end debate by simple majority would validate the motion to end debate and cause it to self-execute. It is my understanding that both former and current Senate Parliamentarians disagree with the advisory opinions of Humphrey and Rockefeller. Tabling a point of order lodged against a motion to end debate by simple majority does not validate that motion or cause it to self-execute. In tabling the point of order, the question simply recurs on the underlying motion, and that question is debatable. At the end of my remarks I intend to propound several parliamentary inquiries that, I believe, will address the errors of the Humphrey and Rockefeller rulings.

Let's examine more closely these two advisory rulings.

In 1967, it was Senator McGovern who offered a motion to end debate by a simple majority on the question of proceeding to a rules change. Senator Dirksen raised a point of order that the motion was out of order because it violated the rules of the Senate. Vice President Humphrey advised the Senate that if the Senate tabled the Dirksen point of order, that act would serve to validate the constitutionality of the McGovern motion. But in any event, the Senate rejected the motion to table the Dirksen point of order by a vote of 37–61. Then the Senate sustained Dirksen's point of order by a vote of 59–37. This is yet another example of the Senate establishing a clear precedent rejecting simple majority cloture of debate on a rules change.

Then, again, in 1975, the Senate faced a very similar question. Senator Mondale offered a motion that would end debate with a simple majority. Majority Leader Mansfield raised a point of order against the motion. Vice President Rockefeller advised that if the Senate tabled the Mansfield point of order, he would interpret that act as an expression of the Senate that the motion was proper—again, as I will show in a moment, a dubious position. After considerable intervening action and debate, the Senate ultimately sustained the Mansfield point of order by a vote of 53–43. Once again, the Senate established a clear precedent of its rejection of simple majority cloture of debate on a rules change.

The danger of the advisory rulings by Humphrey and Rockefeller in 1967 and 1975 is made clear in a grave warning issued by our former colleague, Senator Robert C. Byrd of West Virginia, the longest serving Senator in the history of the Senate and the author of its definitive history. During the debate in 1975 on the question of whether a simple majority could end debate on a proposed rules change, Senator Byrd gave the following remarks that I believe we should heed carefully today.

May I say to those of us on our side that the day may come—although I hope it will not be in my time—when we will be in the minority, and it will take only 51 Senators from the other side of the aisle to stop debate immediately, without one word, on some matter which we may consider vital to our States or to the Nation. Let me show the Senate how this would work. ...

Suppose it were the Bay of Tonkin resolution, which involved a declaration of war by the Congress of the United States. Any Senator could contrive his own—and I do not use that word disrespectfully—any Senator could write a similarly phrased divisible motion, a multiple motion, sent it to the Chair and all someone would have to do is raise a point of order, another Senator would move to table the point of order; if the point of order were tabled, the matter, without debate, would immediately be put to a vote. If a majority were to sustain that vote, debate would be closed on the basic motion to move to consideration of the matter, or if the matter were already before the Senate, to proceed to vote immediately on the matter without further debate.

Senator Byrd that same day said:

I must say that I have to disagree respectfully with the Chair. We are today operating by the rules of the Senate, which rules and precedents provide that a motion before the Senate, against which a point of order has been made and tabled, remains before the Senate and is debatable. I cannot for the life of me understand how, in this instance, the motion, if the point of order is tabled, will not still be before the Senate and will not be debatable. I cannot understand that. I cannot understand how the Chair can logically state that the Senate, by this motion, and by virtue of its tabling a point of order, which is a separate matter, ipso facto shuts off debate on the motion.

Now, if we go down this road, I can guarantee that every Senator in this body will rue this day ... Senators, do we want to do it this way? If this is done today, it can be done any day. If it can be done on this constitutional question, it can be done on any other constitutional question. It can be done on any other point of order the Chair wishes to refer to the Senate for decision. ... I believe that there is a danger here that, if Senators will reflect upon it for but a little while, they can foresee a time when we would say that we went the wrong way to achieve an otherwise very notable purpose ... Put this power in the hands of a tyrannical leadership, and a tyrannical majority of 51 Senators, and we are going to be sorry on both sides of the aisle. (121 Congressional Record 3842–3844)

So in 1975, the Senate did what it has always done when confronted with the question of simple majority cloture on debate of a motion to amend the rules. It rejected it.

The reason that the constitutional approach to rules changes has never been implemented is that every time it has been attempted, the Senate has not gone along.

When Vice President Humphrey explicitly ruled that the Senate could end debate by a simple majority, the Senate voted to overturn that ruling. In those instances when a Vice President has advised that tabling a point of order against a motion to limit debate on a rules change by a simple majority amounted to Senate approval of that motion, the Senate has either voted to reject that interpretation outright or voted against tabling the point of order.

The very basis for minority rights in the Senate is the absence of simple majority cloture, which would allow a majority of Senators to end debate. The absence of simple majority cloture is the only ground on which a minority, and sometimes a single Senator, can stand to demand they be heard on any given issue.

I believe by the letter and spirit of our rules, and the history and practice of this body, the bipartisan leadership proposal before us merits support. But I also recognize that these arguments alone may not suffice for the millions of Americans who understandably do not know or care much about the procedures and rules of the Senate, and who have watched for the last 4 years with mounting frustration as abuse of those rules has obstructed progress and mired the Senate in seemingly endless delay.

The foundation of Democratic governance is rule by majority consent. Indeed, democracy arose as a response to centuries of rule by a privileged and self-interested minority imposing its will on the majority. And the need for a system that protects minority rights is counter-intuitive to many Americans, who find it hard to understand why the majority's will does not always carry the day in the Senate.

But while the foundation of our Democratic system is rule by the will of the people, our Founding Fathers were careful to enshrine protections against what they warned was a dangerous threat to true political liberty. They called it "majority faction," the possibility that a majority of the public would, in pursuit of its own interests, infringe upon the rights of their fellow citizens.

They crafted our system with a series of checks and balances to protect against the dangers of majority faction. And since the founding, many of the most important steps forward for our country have involved protecting minorities from the harms of majority faction.

The giants of the Senate have recognized the vital importance of protecting minority rights. Senator Daniel Inouye was rightly eulogized recently in this chamber as a wise and experienced presence in the Senate. He demonstrated that wisdom from the very beginning of his career here. In

his maiden speech on this floor, he implored the Senate to preserve its protections for minority views, even when those protections allowed a misguided minority to obstruct our Nation's progress. This is what he said:

> The philosophy of the Constitution and the Bill of Rights is not simply to grant the majority the power to rule, but is also to set out limitation after limitation upon that power. Freedom of speech, freedom of the press, freedom of religion: What are these but the recognition that at times when the majority of men would willingly destroy him, a dissenting man may have no friend but the law? This power given to the minority is the most sophisticated and the most vital power bestowed by our Constitution.

Understand what was taking place here. Senator Inouye spoke as the Senate was debating whether to weaken the rights of the Senate minority, so that the Senate majority could end grave injustice by enacting civil rights legislation. Senator Inouye, a man who had himself felt the pain of racial discrimination, even during and after his remarkable service to this nation during World War II, used his first speech on this floor to warn against the attempts "to destroy the power of the minority . . . in the name of another minority."

I want to make clear to my colleagues my belief that defense of the minority's rights in the Senate is not defense of the current use, and abuse, of those rights. It is not a defense of a few who threaten routinely to prevent consideration of judicial nominees unanimously approved in committee, or to prevent debate on legislation. We need to act so that the Senate can function again.

But we can't save the Senate by destroying its very nature and role. In the past, Senators strongly committed to reforming the Senate rules have been equally committed to preserving its institutional strengths. Listen to the words of Senator Mansfield, who, in 1967, worked to reform the cloture rule so the Senate would function more normally—but, importantly, urged his colleagues not to pursue those reforms by the destructive means of establishing simple majority cloture to end debate on a rules change. While arguing strongly for reform, Senator Mansfield said, "[The] urgency or even wisdom of adopting the three-fifths resolution does not justify a path of destruction to the Senate as an institution and its vital importance to our scheme of government. And this, in my opinion, is what the present motion to invoke cloture by simple majority would do." Senator Mansfield added: "I simply feel the protection of the minority transcends any rule change, however desirable. . . . The issue of limiting debate in this body is one of such monumental importance that it reaches, in my opinion, to the very essence of the Senate as an institution. I believe it compels a decision by more than a majority."

In 1975, Senator Byrd argued in favor of the rule change reducing the number of votes needed to end debate from 67 to 60. But he strongly opposed using simple-majority cloture of the debate on that rules change. "I feel that a three-fifths cloture vote would protect the minority, protect the uniqueness of this institution, and preserve a fair and equitable way to close debate. But I am not for destroying the Senate as a unique institution in an effort to reach that end."

In 2010, in testimony before the Rules Committee on this subject, Senator Byrd said:

> During this 111th Congress, in particular, the minority has threatened to filibustor almost every matter proposed for Senate consideration. I find this tactic contrary to every Senator's duty to act in good faith. I share the profound frustration of my constituents and colleagues as we confront this situation. The challenges before our nation are too grave, too numerous, for the Senate to be rendered impotent to address them, and yet be derided for inaction by those causing the delays. . . . Does the difficulty reside in the construction of our rules, or does it reside in the ease of circumventing them? A true filibuster is a fight, not a threat, not a bluff. . . . Now, unbelievably, just the whisper of opposition brings the 'world's greatest deliberative body' to a grinding halt. . . . Forceful confrontation to a threat to filibuster is undoubtedly the antidote to the malady.

There have without question been times when a self-interested or hidebound minority in the Senate has frustrated American progress. But there have also been times when a Senate majority has attempted to impose its will in ways that would have been harmful. Those instances resonate far less loudly when one is a supporter of a frustrated majority. But those of us who have served in the minority in this body, as I have for nearly half my time in the Senate, remember them well.

In the recent past, Senate Democrats in the minority used the protections afforded the minority to block a series of bills that would have unwisely restricted the reproductive rights of American women. We beat back special-interest efforts to limit Americans' ability to seek justice in our courts when harmed by corporate wrongdoing. We used those protections to seek an extension of unemployment benefits for millions of Americans. We used them to oppose the nomination of nominees to the Federal courts who we thought would do great harm to the law. Progressives distressed that the recent fiscal cliff agreement raised the estate tax exemption to more than $5 million should recall that without the protections afforded the Senate minority, a total repeal of the estate tax would have passed the Senate in 2006. Forty-one Senators prevented that from happening.

Over the history of this body, giants of the Senate have repeatedly warned us against the danger of damaging, even with the best of intentions, the Senate's protections for minority rights and extended debate. Time and again, the Senate has heeded those warnings. While it is necessary to reasonably preserve those minority rights, it also is urgent that we restore the Senate's ability to function. Unless we do that, the Senate's character and function within our system of government will remain threatened by constant gridlock. The bipartisan proposal before us holds the promise of restoring the Senate's deliberative and legislative process, without going down a "nuclear" path that might severely damage the Senate in an attempt to save it. This proposal holds the promise of demonstrating to a nation hungering for bipartisan cooperation that we are capable of providing it. I urge my colleagues to embrace a bipartisan approach that will allow us to end the gridlock of which we have seen too much, and to do so with the bipartisan spirit of which our people have seen too little.

Mr. LEVIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I wish to thank Senator LEVIN for his leadership, as well as Senator MCCAIN, Senators SCHUMER, CARDIN, PRYOR, and Senator Kyl—who has now retired from the Senate—and Senator BARRASSO. We are hopeful the leaders will be able to recommend to us a set of changes in our rules and procedures and practices that will help the Senate operate in a fairer and more efficient way. That is what all of us want. It is surprising how many of us want that.

We all worked pretty hard to get here. We all understand we are political accidents. The Senator from Maine, the Senator from Arkansas—we all know that. We are very fortunate to be here. While we are here, we would like to contribute something. That gets down to a couple things. Let's make it easy for a committee bill to come to the floor, and let's make it easier for Senators from the various States and from various points of view to have their say. Allow them to offer their amendment and have it voted up or down and to have a final vote. That is all.

I often use the analogy of the Grand Ole Opry. A person is lucky to be on the Grand Ole Opry. If you are there, you want to sing. Sometimes being in the Senate has been like being in the Grand Ole Opry and not being able to sing. We have all done the finger-pointing. The Democrats—the majority—say: You Republicans are filibustering. You are blocking things and keeping things from happening.

What we are saying is the majority leader has used the gag rule 69 times. Senator Daschle only used it once. What the eight of us found very quickly when we sat down in the first meeting a few weeks ago was that we were of the same mind. We honored this institution and we believe our country has serious problems. We want to get to those problems, and we want to serve our country well in the position we have.

If we are from Michigan, we want to be able to offer the voices of Michigan

on the floor of the Senate. If we are from Nashville or the mountains of Tennessee or Maine, we want to be able to do the same. We want our voices heard—not our voices but the voices of the people whom we represent. That is the importance of the discussion we are having today.

My hope is the majority leader and the Republican leader—and I congratulate them for sort of sticking their necks out in their respective conferences—recommend a way that we can do two things: make it easier for bills to come to the floor and make it easier for Senators to get their amendments in. I believe if that happens, this Senate will see a new day.

On this side of the aisle, we believe we don't need rules changes; that we just need a change in behavior. On the other side of the aisle, there are those who say: Let's get rid of the filibuster. I think once we get back into what we call regular order, all that talk will go away. I think Senator MIKULSKI and Senator SHELBY are going to have 10 or 11 or 12 appropriations bills ready to come to the floor within a few weeks, and I think they are going to want them to be considered by this body. If they do, we will be busy for 8 or 10 weeks and we will have dozens of amendments. I heard the chairman of the Budget Committee say she intended to have a budget and, if she does, we will have dozens of amendments. Then the voices of the people of this country will be heard here on the floor of the U.S. Senate. We will have votes, we will have amendments, and we will be doing our job, and all of this talk we are having right now will be pushed into the background.

There is a reason for a Senate that is different than the House of Representatives. It goes all the way back to the founding of our country. It was noticed by the first observers of our country. Alexis de Tocqueville, in his fascinating view of America in "Democracy in America" which he wrote in the early part of the 19th century, said America faced two great challenges. One was Russia. The other one was the tyranny of the majority. This is a democracy. This is a majority rules country. But he saw in a great, big, complex country the danger of the tyranny of the majority. And this institution, the U.S. Senate, has from the beginning of the country protected the minority and protected the unpopular view. If a Senator didn't like the Vietnam war, he or she could stand up and say something here and maybe do something about it. Or if a Senator was on the other side, maybe he or she could do something about it. They could make people slow down and stop and think before the country rushes ahead.

Senators of both parties eloquently, as Senator LEVIN has pointed out, have defended that right. We Republicans in the Bush administration were so upset about the Democrats' blocking of judges that we said we might use the nuclear option, that we might turn this into a majority body. Now there are a number of Democrats who feel the same way here. I hope we put that away and realize that this is the body that stands up for minority views in this country and says, don't run over minorities. Stop and think. Stop and think before you do that. Then we forge a consensus.

To conclude my remarks—because I see the Senator from Arkansas, who has been an outstanding contributor to this effort, as he has been through his time in the Senate—I came to the Senate as a young staff aide in 1967. That was a long time ago. I saw a little bit of how important it is to have a body that gains a consensus when we are talking about a big, difficult issue for the whole country. In 1967, the issue was civil rights. The Senator from Maine knows about those early days in the Senate. The Senator from Michigan does as well. There were a minority of Republicans at that time. Everett Dirksen was the Republican leader. But the civil rights bill of 1968 was written in the Republican leader's office. Why? Because at that time they had to get 67 votes to pass it.

One might say, Well, that shows what is wrong with the Senate, because it slowed things down. But looking back over history, those last 8 or 10 years of civil rights laws, the Voting Rights Act, eventually all of the laws that changed our country and continue to change it, were big steps. And what happened in 1968 once the Senate gained a consensus on civil rights? Senator Russell, who led the opposition to the civil rights bill through his whole career, got on the airplane, went home to Georgia and said, It is the law of the land. Now we obey it.

So the value of having a body in our government that respects the minority and forces a consensus is that once we reach that consensus—once we reach it—we then have a better chance of having the country behind what we do on the very controversial and difficult issues we face.

So if this works out as I hope it does today, I pledge my part to work with the majority, as one Senator, to help make sure bills come to the floor, and to work with Republican Senators in the minority to help make sure they get their amendments. If we do, I think we will do our job better, we will gain more respect, the country will have a stronger government, and the rights of the minority will be protected.

I thank Senator LEVIN for his leadership, as well as Senator PRYOR and the others with whom I have worked.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I wish to thank Senator LEVIN and Senator ALEXANDER for their kind comments about me. The Senator from Tennessee and I came to the U.S. Senate at the same time. That was 10 years ago.

One of the things I think everyone would agree with is we have seen over the last 10 years a waning of effectiveness in the Senate. A large part of that is the fact that this floor is not used as it should be. This floor has been used to block and obstruct. Both parties are guilty of that. This floor should be the marketplace of ideas. It should be where we come together and we work to resolve our differences. Our differences may be partisan, they may be regional, they may be philosophical, they may be generational, whatever, but our Founding Fathers set up our system of government where there would be one place where difficult, complex, thorny, even sometimes politically treacherous issues can be resolved, and that is on the floor of the U.S. Senate.

When we, again Democrats and Republicans, abuse the rules around here and we stymie the Senate from acting, we get gridlock, and gridlock is not good for the country. I firmly believe one of the reasons the American public is so disgusted with Congress right now is because of the things that are happening and not happening on this floor.

When we think about our system of government and when our Founding Fathers set it up, of course we have the three branches, but as a practical matter, the floor, right here, is the only place in our government where the American people—the people we represent—can actually see their law being made. Americans don't see law being made at the White House. They go out there and they huddle up in their conference rooms and they come out to the Rose Garden and they make the announcement. We never see the process. We don't see the process in the U.S. Supreme Court or in the courts of appeals. What happens there is the lawyers and the parties come in and make their cases and then the Justices and judges go back and conference and they talk about it back in their chambers, and they come out with their decision, and that is what we have. We don't always know what the deliberations are. We don't know all the considerations. The same thing in the U.S. House of Representatives, with all due respect to our other Chamber down the hall. Because of the way their rules operate, because of the Rules Committee and the way it is structured and their history and, quite frankly, their DNA, it is a majoritarian body. But not the U.S. Senate. In the Senate we allow Senators to amend and debate and to vote. That has been one of the problems here in the last 10 years. The Senator from Tennessee—and I see the Senator from Texas on the floor—we all came in together. This Senate has lost a lot of ability to do that.

I am firmly convinced we have sufficient verbiage in rule XXII of the Senate Rules to require a talking filibuster. I think that is critically important. It is not a new interpretation, but it is utilizing the existing interpretations, the longstanding history of the Senate, based on parliamentary decisions, based on decades of things that

have happened here on the floor, where we have the authority already in rule XXII. But we have asked our two leaders to clarify and state and notify all of us how we are going to handle issues during this Congress. The way we are going to handle it when it comes to the talking filibuster is we are going to require Senators to be here to object. No more phone-in filibusters. We are going to require Senators to come down and state their objections, to come down and actually speak. If they have a problem with moving forward, they need to come and speak about it. If they want to start a filibuster, they should be here to speak on the floor. What is going to happen is the majority of Senators who want to see legislation get done may have to do a little work and be here late nights, but that is part of it. That is what we signed up for. It is like the Senator from Tennessee said a few moments ago. We all worked very hard to get here, and we came here to work for the country. If we are ever going to have a chance of resolving the big and difficult issues that face our Nation—issues such as our debt and deficit; issues such as the fiscal cliff; a whole set of issues including tax reform, entitlement reform—we can bet our last dollar those things are going to happen in the Senate. That is where things get done.

The fiscal cliff, with all due respect to the House, didn't happen in the House, it happened in the Senate. The minority leader and the Vice President worked it out. That is the way things have always gotten done, for the most part, in American history, and that is the way we need to allow things to get done in this Congress, because we have too many big issues to block everything that is coming through on the Senate floor.

Again, I wish to thank Senator LEVIN and Senator MCCAIN for leading this effort. They are great leaders. I thank Senator Kyl, Senator BARRASSO, Senator ALEXANDER. Participating in those meetings with my Republican colleagues was a great experience, to listen to them, listen to their concerns. I think it was an education for all the Democrats to have that quality time where we did listen and then they listened to us. I think that was very important. We need to do more of that around here. We will get a lot more done if we do.

Also, our Democratic colleagues, of course led by Senator LEVIN, Senator SCHUMER, and Senator CARDIN, everybody contributed, and I think it is something we should be proud of and it is also a great victory for bipartisanship. It is a great victory for bipartisanship. I think that is what the American people are screaming out for: for us to work together to get things done, and this is a good example of that.

EXTENSION OF MORNING BUSINESS

Mr. PRYOR. Mr. President, I ask unanimous consent that the period of morning business be extended until 7:15 p.m. today, and that all provisions of the previous order remain in effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Georgia.

THANKING OUR COLLEAGUES

Mr. ISAKSON. Mr. President, as I walked to the Capitol, I had not intended to speak. But when I came in and started listening to Senator PRYOR and Senator LEVIN, and I listened earlier today to Senator MCCAIN and now Senator ALEXANDER, it made me want to come to the floor and thank them for the effort they have made to hopefully make us a better working body in the next 2 years than we would have been otherwise preceding this agreement.

When Senator ALEXANDER made the remarks about our predecessor, Richard Russell, and when he came home to Georgia after a rigorous debate, an arduous debate, that took place on civil rights, it made me recognize the appreciation and respect our predecessors had for the result of the debating process.

As I listened to Senator PRYOR, I had a flashback to 2 weeks ago when a number of us attended the movie "Lincoln." It was a screening of the movie downstairs, and Steven Spielberg was there. I thought about those great scenes in the movie "Lincoln" where the U.S. Congress debated slavery and whether we were going to abolish it. We came to a decision, we had a vote, we debated it, and the abolition of slavery took place, all because the Congress functioned, all because politicians took the issues to the floor. They challenged one another. They worked hard for what they thought was best for the country. I think tonight when we vote on the changes that will be adopted, we preserve the interests of the minority. We preserve the best heritage of this body. We put ourselves in a state where we will debate on the floor of the Senate and make decisions for the American people, and the result will be a better country and a better product by the U.S. Senate.

So I thank, Senator ALEXANDER, Senator PRYOR, Senator MCCAIN, wherever you might be, and Senator CARL LEVIN, for a job well done.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MERKLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

Mr. MERKLEY. Madam President, I rise to share a few comments on the votes that we are about to take. In particular, I am struck by the enormous amount of conversation over the last few days over how we make this body, our beloved Senate, work more effectively in addressing the big issues facing America.

I think all of us have had the experience of our constituents back home recognizing that the last 2 years, and many years before, were ones that we had a particular growing element of paralysis that we had a responsibility to address. Tonight the Senate is going to be speaking in a bipartisan fashion and saying this cannot continue in the same way; that we need to take steps toward having a more functional Senate.

I don't think it will come as a surprise to anyone in this Chamber that I had hoped we would go a little further in addressing the silent filibuster that has been haunting us in these Halls. But here is the important thing. The important thing is that this Chamber is speaking tonight in a bipartisan voice, in a strong voice, saying we must take steps for this deliberation to work better. I think that message reverberates with the American people who are looking at the many challenges we face as a nation and who have been watching through the courtesy of C-SPAN and seeing that often, when they want us to be addressing these challenges, we are here in quorum calls.

A substantial amount of that can change, both with the modest steps we are taking tonight and, hopefully, in the collaboration between the two parties in the spirit of having a functioning legislature.

I want to thank a number of groups who have worked very hard to bring to us the importance of making change: the Communications Workers of America, the Sierra Club, the Alliance for Justice, the entire Fix the Senate Coalition, Daily Coast, Credo, the Progressive Campaign Committee, and the nearly half million Americans who have signed petitions to say: Please, Dear Senators, work hard on this. It matters. I think their voices were heard.

So I extend my appreciation to the leadership on both sides who have been working so hard to figure out these steps forward, to try to have a series of tools on the motion to proceed, to figure out how we can get more effectively to conference committee with the House, how we can cut down on the number of hours that are often wasted after a cloture vote on a nomination. So there is significant progress in a number of areas.

I certainly pledge to my majority leader and to my colleagues on both sides of the aisle to remain engaged in this conversation about the functioning of the Senate. I appreciate the work they have done. I appreciate the steps we are taking tonight. I also appreciate the spirit in which many folks are saying: Let's make these things work. We hope they work. And if they don't get us there, let's return to this conversation because we do have that

underlying responsibility to the citizens of the Nation to have a Senate that can act. In the words of the President just outside a few days ago, it is time to act. He called upon the Nation and he calls upon us, and we make significant steps in that direction tonight.

Mr. UDALL of New Mexico. Mr. President, I rise today to talk about our efforts to change the Senate rules.

For the second time since I have been in the Senate, the constitutional option has been crucial. It has pushed this body to seriously look at changing the way we do business.

This week the majority leader and majority whip declared majority support for the constitutional option. As a result, the Republican leader has finally agreed to some Senate rule changes.

As I said more than 3 years ago when I first proposed the constitutional option, it is time for reform. There are many great traditions in this Chamber that should be protected and respected. But the paralyzing abuse of filibusters is not one of them.

Senators MERKLEY, HARKIN, and I introduced a package of reforms that is fair, that reins in the abuse, and that protects the voice of the minority.

While I believe our reform package is a much better way to restore debate and deliberation to the Senate, I appreciate the leadership's efforts to get a bipartisan agreement. To move forward to reform the filibuster and reduce Senate gridlock.

I have carefully considered the compromise proposal that Leaders REID and MCCONNELL have crafted. I don't believe their proposal does enough to reform the Senate, but it does show that there is consensus, that both sides of the aisle recognize that the Senate is broken, that we must have change.

The leaders' proposal is a step in the right direction. I am most concerned that it does not eliminate the fundamental cause of Senate dysfunction—the fact that any Member can halt Senate business without even showing up on the Senate floor. We shouldn't do away with the filibuster, but we should demand greater responsibility from senators who use it.

The majority leader and the Republican leader are telling us that they will make Senators who object or threaten filibusters come to the floor and actually debate, using the existing rules. The proof of this will be over the next 2 years. We will be watching.

I believe we could have achieved more substantive reform by using the constitutional option to amend the rules with a majority vote. I know several of my colleagues think this would set a dangerous precedent. I disagree.

I know that we may serve in the minority at some point in our Senate careers. Senators MERKLEY, HARKIN, and I have not proposed any rules changes that we are not willing to live with in the minority.

Senator HARKIN made his proposal when he was in the minority. I served in the minority in the House—which is a lot worse than the minority around here. So I don't think looking at our rules and amending them by a majority vote at the beginning of a Congress is dangerous. On the contrary. It is a healthy exercise to make sure we can still function as a legislative body.

We started this effort over 3 years ago. We have made progress. But rules reform is not over. Our work is not complete. We should always seek to find ways to be a better institution. That is why I believe we should review and adopt our rules at the beginning of every Congress.

One of the resolutions today is a standing order—it applies for only this Congress. We will have an opportunity to revisit this in two years.

I want to close by saying this. Since the beginning of this process, my actions have been guided by the great respect I have for the institution of the United States Senate, my reverence for the many great men and women who have served here, and my sincere affection for my colleagues.

That remains true today. I want to thank my colleagues for their consideration of our proposals, for their willingness to listen, and for their friendship.

And I want to make clear to all those who have supported this effort—our work will continue. Our cause endures. History has made clear that substantial reform is more often than not the work of many Congresses, not just one.

I commit to doing all I can to ensure that the Senate is not a graveyard for good ideas, that it is once again the world's greatest deliberative body, and that we have a government that truly responds to the real needs of the American people.

Mr. GRASSLEY. Mr. President, we are facing major changes in how the Senate operates and even minor changes can have big consequences.

Since the Senator even from the smallest State represents hundreds of thousands of Americans, any change to how senators are able to represent their constituents' views is of great importance.

We have heard plenty of talk from the other side of the aisle about how the Senate's current dysfunction simply boils down to Republican abuse of the filibuster.

If you are a partisan Democrat and inclined to think the worst of Republicans, then that explanation may hold water for you.

On the other hand, those who are more fair minded will find themselves wondering if there isn't more to the story.

A fair analysis of what is wrong with the Senate must look at the situation from both sides.

From the Republican point of view, the main gripe with how the Senate has been operating recently is the inability of the minority party to offer amendments and receive a fair hearing for our ideas.

The Senate rules provide that any Senator may offer an amendment regardless of party affiliation.

The longstanding tradition of the Senate is that members of the minority party have an opportunity to offer amendments for a vote by the Senate, even if those votes don't fit the agenda of the leadership of the majority party.

Of course, if those amendments don't receive a majority of votes in the Senate, they cannot be passed.

No one is arguing for some sort of right of a minority of senators to advance a minority agenda.

However, it is not uncommon for an idea that comes from the minority party to attract votes from the majority party, even enough to pass.

This can be inconvenient or even embarrassing to the leadership of the majority party.

Perhaps there is a Republican amendment that would reveal a split within the Democratic caucus.

Perhaps a Republican might offer an amendment that has broad public support and it would be hard for certain Democrats to explain to the people they represent why they voted against it.

What's wrong with taking tough votes and showing the American people where you stand?

Those who lecture us about majority rule can't have it both ways.

If an amendment gets the votes of 45 Republicans and 6 Democrats, that is a majority, but that is exactly the scenario the majority leader has been trying to avoid.

Minority amendments have routinely, systematically been blocked in recent years in the Senate.

The Majority Leader has consistently used a tactic called "filling the tree" where he offers blocker amendments that block any other senator from offering their own amendment unless he agrees to set his blocker amendments aside.

He is able to get in line first to put his blocker amendments in place because of a tradition that the Majority Leader has priority to be recognized by the presiding officer.

This doesn't appear anywhere in the Senate rules and it arguably contrary to the rules.

This so called filling the tree tactic used to be relatively rare, but it has become routine under this Democratic leadership.

So what are Republicans to do if they have amendments they want to offer?

We can ask the majority leader to allow us to set aside his blocker amendments so we can offer an amendment.

His response has been to ask us what amendments we want to offer, and he will only agree to set aside his blocker amendments if he approves of the particular Republican amendment.

If there are amendments that he doesn't like, he says "No."

Then, with amendments blocked, he makes a motion to bring debate to a close, or "cloture".

When cloture is invoked, it sets up a limited time before a final vote must take place.

By keeping amendments blocked while running out that clock, the majority leader can force a final vote on a bill without having to consider any amendments.

Naturally, under these circumstances, members of the minority party who wish to offer amendments will vote against the motion to end debate and force a final vote until they have had an opportunity to have their amendments considered.

However, when Republicans vote against the majority leader's motion to end debate, we are accused of "launching a filibuster".

Many Americans may be surprised to learn that the Senate rules do not define what constitutes a filibuster.

The Merriam-Webster Dictionary defines a filibuster as "the use of extreme dilatory tactics in an attempt to delay or prevent action especially in a legislative assembly."

The fact is, a filibuster can refer to any procedure perceived as dilatory, which is in the eye of the beholder.

In the case I have described, if Republicans refuse to go along with the majority leader's attempt to deny Senators the right to offer amendments, is that an extreme dilatory tactic?

I would say it is a logical response to an assault on our rights.

Republicans can't be expected to vote for the majority leader's motion to end consideration of a bill before we have had a chance to offer any amendments.

That brings us to the so called "talking filibuster" proposal that has been mentioned so much on the Senate floor.

Some have proposed that Senators be required to talk non-stop on the Senate floor or a final vote can be forced, even if there have been no amendments allowed.

In other words, when the majority leader has amendments blocked, if Republicans want to defend their basic right to offer amendments, they would have to go to the floor and debate non-stop.

That doesn't make any sense.

What does non-stop debate have to do with giving up your right to offer amendments?

Here is where advocates of the so called "talking filibuster" confuse the issue.

As I mentioned, a filibuster can refer to any tactic perceived as dilatory, but when most Americans think of the filibuster, they think of Jimmy Stewart in the classic film Mr. Smith goes to Washington standing and talking without stopping for an extended period of time to delay proceedings and make a point. It just makes sense that if you want to engage in this type of filibuster, you should have to actually speak.

Some Senators would have us believe that somewhere along the line the filibuster was mysteriously transformed so Senators no longer had to talk on the floor of the Senate, but that is not the case.

The filibuster itself hasn't changed, just what we call a filibuster.

When Democrats complain about Republican filibusters, they aren't talking about Mr. Smith Goes to Washington filibusters.

They are talking about Republicans refusing to vote for the majority leader's motion to end consideration of bills without the opportunity for amendments.

Again, the rules and traditions of the Senate dictate that Senators have a right to offer amendment.

What justification can there be for forcing Senators to speak for hours on the floor or lose the right to offer amendments?

That would just encourage the majority leader to block amendments even more and use this new tool to jam legislation through the Senate without considering alternative views. Such a situation would only make the underlying problem worse.

This isn't just Republicans saying this.

Listen to what the New York Times said: "The use of filibusters has risen since the 1970s, especially when Republicans have been in the Senate minority. But the most recent spike of Republican filibusters has coincided with the Democrats' unprecedented moves to limit amendments on the Senate floor."

The current majority has moved to cut off debate and amendments on a measure other than the motion to proceed over 100 times.

This doesn't even tell the whole story because much of the time, the Senate Majority Leader doesn't have to actually use his amendment blocking tactic.

He simply informs Republicans that he will block amendments, or refuses to commit to allow Republican amendments before making the motion to consider a bill.

Republicans can hardly be expected to vote in favor of taking up a bill under these conditions.

I should point out that it isn't just members of the minority party who have been affected by the blocking of amendments.

There have been far fewer opportunities for Democrat Senators to offer amendments in recent years than used to be the case.

Not all Democrats will agree with every aspect of a bill brought before the Senate by their own leadership.

Rank and file Democrats might also have ideas to improve a bill that had not yet been considered before being taken up by the Senate.

Those who claim to want to fix the dysfunction of the Senate but who focus only on the alleged dilatory tactics by the minority party and ignore the heavy handed tactics by the current majority party are at best only addressing half the problem.

Moreover, to the extent any change to the Senate rules strengthens the ability of the majority to steamroll the minority, partisanship will only get worse.

The rules of the Senate, which protect the rights of the minority, force the majority to work with the minority if they want to get things done.

As a result, the Senate has historically been a more bipartisan place than the House.

That is a positive feature of the Senate that we should not discard lightly.

The role the Senate was intended to play by our Founding Fathers is clear.

I have described before how the Senate, with its longer staggered terms and other features, was specifically structured to act as a check on the passions of temporary majorities as represented in the House of Representatives.

I won't go into detail on that subject again because it is already in the CONGRESSIONAL RECORD, but I quoted James Madison, the Father of the Constitution, at length.

I have heard some select quotes from the Federalist Papers also used by some on the other side to argue that the Framers of the Constitution actually favored a more strictly majoritarian system.

One common quote is from Federalist 58, which discusses how only a simple majority is required for a quorum in the House of Representatives. Madison explains that this is to prevent a situation where a minority of Members can halt action by walking out, as happened with Democrat State legislators during the redistricting fight in 2003 and more recently in Wisconsin during the debate about collective bargaining for public employees.

In context, I see nothing that would contradict the expressed concerns elsewhere in the Federalist Papers about tyranny of the majority.

I have also heard a reference to Federalist 75, which ironically discusses the supermajority requirement in the Constitution for ratifying treaties.

The discussion is about whether the supermajority ought to be two-thirds of Senators present or two-thirds voting, not whether there ought to be a supermajority requirement.

We can never know what the Framers would have thought of the cloture rule as it currently exists.

However, we know that the Senate was specifically intended to prevent the majority from steamrolling the minority.

The fact is, our Constitution is a compromise between a purely majoritarian system where the rights of the minority are threatened by what Madison called the "superior force of an interested and overbearing majority" and the system under the Articles of Confederation where nothing could be done unless it was practically unanimous.

Our goal should be to return to the tradition of the Senate as a deliberative body where all Senators have an opportunity to put forward proposals, and the Senate can work its collective will.

Any reform of the Senate rules must balance the interests of the majority with the rights of the minority, not tip the balance toward one or the other.

If we fail to strike that balance, partisanship will only get worse.

That is easier said than done.

I know several Senators put forward proposals that they think are fair and will fix the Senate.

However, it takes more than assurances that you are willing to live under the rules you are prepared to impose should you find yourself in the minority.

You can't say that for sure until you are in that position.

Any serious attempt at a fair approach to the Senate's problems must involve engaging members of the other party and addressing their legitimate concerns.

That means that any reform of the Senate rules must restore a full and open amendment process where individual senators of any party can offer amendments.

Does the deal before us meet that test?

I am not sure.

The deal the two leaders have struck does include a guarantee of two amendments for the minority party, presumably picked by the minority leader.

That at least acknowledges the legitimate concerns on my side of the aisle about the blocking of amendments.

Two amendments is better than none, which is what we have had in practice.

It is also better than a unilateral rules changes imposed by the majority on an unwilling minority.

However, I have described how the right to offer amendments is a fundamental right of individual Senators representing their respective States.

There are 45 Republicans in the Senate, not 2.

It is also true that rank and file Democrats have plenty of proposals they have a right to put forward.

They shouldn't have to ask their leader's permission to do so any more than Republicans should.

Perhaps knowing that he will have to deal with two Republican amendments, the majority leader will decide to allow more bills to be considered under an open amendment process the way they should be. I hope so.

However, it is also possible that the majority leader will decide that there is no reason to ever go back to the traditional open amendment process now that we have this new process that only guarantees two amendments.

Two amendments could become the new ceiling rather than the floor.

If that is the case, we will have made the Senate more partisan and more dysfunctional.

It remains to be seen these changes will work in practice and I will be watching closely.

Mr. LEAHY. Mr. President, during my 38 years in the Senate, I have served with Democratic majorities and Republican majorities, during Republican administrations and Democratic ones. Whether in the majority or the minority, whether the chairman or ranking member of a committee, I have always stood for the protection of the rights of the minority. Even when the minority has voted differently than I have or opposed what I have supported, I have defended their rights and held to my belief that the best traditions of the Senate would win out and that the 100 of us who stand in the shoes of over 300 million Americans would do the right thing.

Yet over the last 4 years, Senate Republicans have come dangerously close to changing something central to the character of the Senate and threatening its ability to do its work for the American people.

As a caucus, instead of trying to work with us on efforts to help the American people at a time of economic challenges, Senate Republicans have engaged in an across-the-board procedural barricade. On issue after issue, from the DISCLOSE Act to efforts to curb massive subsidies for big oil companies, from the American Jobs Act to the Paycheck Fairness Act, from legislation to help small businesses to providing support for our veterans, Senate Republicans have relied on the unprecedented use of the filibuster to thwart the majority from making progress. They have long since crossed the line from use of the Senate rules to abuse of the rules, exploiting them to undermine our ability to solve national problems.

Filibusters that were once used rarely have now become a common occurrence, with Senate Republicans raising procedural barriers to even considering legislation or voting on the kinds of noncontroversial nominations the Senate once confirmed regularly and quickly by unanimous consent. The leader has been required to file cloture just to ensure that the Senate makes any progress at all to address our national and economic security, and a supermajority of the Senate is now needed even to force a vote on mundane issues.

That is not how the Senate should work or has worked. The Senate is built on a tradition of comity, with rules that only function based on the kind of consent commonly and traditionally given. The rules are not built to aid and abet Senators using across-the-board filibusters and obstruction at every turn. The Senate does not function if an entire caucus takes every opportunity to use obscure procedural loopholes to stand in the way of a vote because they might disagree with the result. Without serious steps to curtail these abuses, the approach taken the last four years by Senate Republicans risks turning the rules of the Senate into a farce and calls into question the ability of the Senate to perform its constitutional functions.

In an earlier period of Senate history, when the filibuster was widely regarded as having become too great an obstacle for long-overdue reforms—for which there was a wide and general national consensus—I had the honor of playing a small part as a freshman senator during Senator Walter Mondale's heroic and successful efforts to lower the cloture bar from 67 votes to 60 votes. Then, as now, reform came through arduous, bipartisan negotiation.

I am hopeful that the agreement reached today by the majority leader and the Republican leader represents that kind of serious step toward restoring the tradition of the Senate and its ability to work for the American people. I am hopeful that the Republican Senators who join today with Senate Democrats follow through on the commitment they are making to curtail the abuse of Senate rules and practices that have marked the last four years.

The progress we are making today is a credit to Senator MERKLEY, Senator UDALL, Senator HARKIN, and others whose efforts to reform the Senate rules are justified by the abuses we have seen. The diligence and energy of these reformers provided the impetus for the agreement reached today by the majority leader and the Republican leader. In my view the agreement does not go far enough to address abuses, and I wish it included more of the commonsense proposals put forward by the reformers to make the Senate run more efficiently. As I did at the beginning of the last Congress, I support their proposals to put the burden of maintaining a filibuster on those seeking to obstruct the Senate, rather than on those seeking to overcome the obstruction. However, I am willing to accept today's agreement as a meaningful compromise with concessions by both sides that will have the support of senators from both parties, rather than the support of only one party. I will support it because it can be adopted by a supermajority vote instead of the kind of extended and damaging floor fight over the rules that would undermine any progress we hope to make. With so many urgent issues to tackle for the American people, we cannot risk giving opponents of progress another excuse for inaction.

I am encouraged by the verbal agreement between the majority leader and the Republican leader to change the practices of how the Senate handles filibusters. Under this agreement, the bill managers and leadership would call on Senators who are threatening a filibuster to come to the floor, which will properly put the burden of a filibuster on those seeking to obstruct, rather than those seeking to make progress. The leaders will also press that postcloture debate time be used for debate and will bring votes to produce a quorum to avoid delay. These commonsense steps will help build on today's rules changes to help curtail the abuses we have seen and restore the Senate's ability to work for the American people.

I also believe the Standing Order that is part of today's agreement will give the majority leader new tools for overcoming the wholesale Republican obstruction of President Obama's judicial nominations. As chairman of the Judiciary Committee, I have been especially concerned about the damage being done by Republican obstruction to the Senate's unique responsibility for ensuring that the judicial branch has the judges it needs to do its job. Over the last 4 years, Senate Republicans have abandoned this constitutional responsibility, using unprecedented filibusters to delay and obstruct President Obama from appointing to the Federal bench even judicial nominations that have bipartisan support. As a result of this brand of Republican obstruction, we begin President Obama's second term with the Judiciary nearly 20 percent below where it needs to be in terms of judges, and a prescription for overburdened courts and a Federal justice system that does not serve the interests of the American people.

Senate Republicans have already forced the majority leader to file cloture on 30 of President Obama's judicial nominations, almost all of which were noncontroversial and were ultimately confirmed overwhelmingly. Yet the Senate rules give the minority the ability to demand 30 hours of floor time even after a supermajority of the Senate has voted to end the filibuster of a judicial nomination. This extended debate time is meant to give the Senate a chance to consider amendments that are germane to a bill so it serves no purpose for judicial nominations. Rather, it has been used by Senate Republicans as a threat to obstruct the Senate for days just to get to a vote on each of these noncontroversial nominations. Such an approach has made it easier for a silent minority of Senate Republicans to make the costs too high for the majority leader to push for votes on nominees and has led directly to the unnecessary and damaging backlog of judicial nominations we have seen for years on the Senate calendar.

The agreement reached today has a good chance of curtailing this type of abuse of the rules in this Congress by reducing this extended debate time after the end of a filibuster on district court nominations from 30 hours to two hours. I believe this change will increase the ability of the majority leader to push for votes on district court nominations, where the threat by Senate Republicans of extended debate time has been particularly damaging.

Federal district court judges hear cases from litigants across the country and handle the vast majority of the caseload of the Federal courts. Nominations to fill these critical positions, whether made by a Democratic or Republican President, have always been considered with deference to the home State Senators who know the nominees and their States best and have been confirmed promptly with that support. Never before in the 38 years I have been in the Senate have I seen anything like what has happened in the last 4 years, when we have seen district court nominees blocked for months and opposed for no good reason. Senate Republicans have politicized even these traditionally non-partisan positions, needlessly stalling them for months with no explanation.

Until 2009, Senators deferred to the President and to home State Senators on district court nominees. During the 8 years that George W. Bush served as President, only five of his district court nominees received any opposition on the floor. In just 4 years, Senate Republicans have voted against 39 of President Obama's district court nominees, and the majority leader has been forced to file cloture on 20 of them, with many more left to linger month after month without a vote on the Senate calendar due to the threat by Republicans to require half a legislative week or more just to confirm one of them. As a result, it has taken the Senate more than three times as long to vote on President Obama's district court nominees as it did to vote on President Bush's.

The agreement reached today will blunt the ability of Senate Republicans to block important legislation and district court nominations without accountability merely by the threat of burning so much Senate time. I wish that the proposal also applied to Federal circuit court or Supreme Court nominations, where the extended postcloture debate time also serves no purpose. But the progress I believe we will make as a result of this bipartisan compromise is a good first step towards helping us reduce the extended backlog of judicial nominations created by Republican obstruction and should result in more judges serving the American people.

There is no question that the reforms sought by many Democratic Senators are justified by the extended and unprecedented abuse of the Senate rules and practices by Senate Republicans that began when President Obama took office. However, I hope that by reaching this bipartisan agreement we build a foundation for restoring the Senate's ability to fulfill its constitutional duties and do its work for the American people. Now the burden is on Senate Republicans to work with us rather than hide behind an abuse of the rules to block progress.

The American people want Congress to be able to solve national problems like disaster relief, comprehensive immigration reform, and the reauthorization of the Violence Against Women Act. They want us to work together on commonsense solutions to reduce gun violence and to ensure that all Americans have access to a working Federal court system. I hope that today's bipartisan compromise holds the promise of getting more done to help the American people. I look forward to working with those on both sides of the aisle in the coming months.

The PRESIDENT pro tempore. The majority leader is recognized.

AMENDING THE STANDING RULES AND PROCEDURE OF THE SENATE

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the consideration of the following resolutions en bloc: S. Res. 5, Harkin; S. Res. 15, a resolution providing a standing order to improve procedures for the consideration of legislation and nominations in the Senate; and S. Res. 16, a resolution amending the Standing Rules of the Senate relative to conference motions and bipartisan cloture motions on the motion to proceed.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Further, Mr. President, that the time until 7:55 p.m. be equally divided between the two leaders or their designees for the purpose of debating these resolutions concurrently; that the only amendment in order to any of the resolutions is a Lee amendment to S. Res. 15, that upon use or yielding back of time, the Senate proceed to vote in relation to S. Res. 5; that upon disposition of S. Res. 5, the Senate vote in relation to the Lee amendment to S. Res. 15; that upon disposition of the Lee amendment, the Senate proceed to vote in relation to S. Res. 15, as amended, if amended, and S. Res. 16, in that order with no intervening action of debate; that S. Res. 15 be subject to a 60-vote threshold for adoption; further, that S. Res. 16 be subject to a threshold of two-thirds of those voting for adoption; that there be no other amendments, motions, or points of order in order to any of these resolutions prior to the votes in relation to the resolutions; finally, none of the resolutions be divisible.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report the resolutions by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 5) amending the Standing Rules of the Senate to provide for cloture to be invoked with less than a three-fifths majority after additional debate.

A resolution (S. Res. 15) providing a Standing Order to improve procedures for the consideration of legislation and nominations in the Senate.

A resolution (S. Res. 16) amending the Standing Rules of the Senate relative to conference motions and bipartisan cloture motions on the motion to proceed.

The PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. I yield the time on this side to the Senator from Utah.

The PRESIDENT pro tempore. The Senator from Utah is recognized.

Mr. LEE. Mr. President, in just a moment I will be offering an amendment to S. Res. 15. The purpose of this amendment is to protect this institution as the world's greatest deliberative legislative body. The hallmark characteristics of this body that make it distinct, that make it both great and

deliberative, include the fact that as individual Senators we are supposed to have the right to participate in an open and robust debate that includes an open amendment process. This is historically one of the things that has defined this institution. It is naturally the outgrowth of the fact that pursuant to article V of the Constitution, each State of the Union is entitled to equal representation in the Senate.

So as we are talking tonight, we have to remember that we are not talking about the rights of the minority or the majority. We are talking about the rights of each individual Senator having been duly elected by the voters in his or her State. I have a concern that some of the implications of S. Res. 15 could undermine this characteristic of the Senate. In other words, S. Res. 15, while crafted with the very best of intentions, could be applied at some point so as to undermine this right of each and every Senator to offer an amendment.

What my amendment does is to guarantee that once this procedure, the procedure under the standing order created by S. Res. 15—once it has been invoked, every Senator in this body would have the right to file, postcloture, a germane amendment to the pending legislation.

I think the history, the custom, and the tradition of this body and all the things that have made this body great require nothing less than that.

I urge my colleagues to support this amendment once we bring it up.

I yield my time.

Mr. REID. I yield 1 minute to the Senator from Iowa.

The PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I have long believed that rule XXII does not define the Senate. The Senate is defined in the Constitution, and it does not mention rule XXII or filibusters.

Second, I do not believe the dead hand of the past should control any Senate now or in the future.

Third, I believe the filibuster should be used to slow things down, to make sure the minority has the right to offer amendments and to have them debated and voted on. It does not mean the minority has a right to win, but they have the right to debate and slow things down. The filibuster should not be used as a method to put things in the trash can.

As George Washington supposedly said to Jefferson, it was to cool things down. I can understand that. But the filibuster has been used, and it will still be used even in the future, so that the minority can stop the majority. I have long believed the majority should have the right to enact legislation with due regard for the rights of the minority to be able to offer amendments and slow things down. But that is not what is happening and that is what my proposal I first offered in 1995, and continue to offer today, would do.

Yes, it would protect the filibuster as a means of slowing things down, but eventually the majority would be able to act, and that is as I think the Founders and the drafters of our Constitution really meant it to be.

The PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I believe I have no further requests for time on this side. If that, in fact, is the case, and the Republican leader has no request for time, I yield whatever time I have.

Mr. MCCONNELL. I yield whatever time we have.

The PRESIDENT pro tempore. All time is yielded back. The question is on agreeing to S. Res. 5.

The resolution (S. Res. 5) was rejected.

The PRESIDENT pro tempore. The pending business is S. Res. 15.

AMENDMENT NO. 3

Mr. LEE. I call up my amendment.

The PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. LEE] proposes an amendment numbered 3.

Mr. LEE. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the Standing Rules of the Senate to reform the filibuster rules to improve the daily process of the Senate)

At the end of the resolution, insert the following:

SEC. _____. REFORM THE FILIBUSTER RULES.

(a) MOTIONS TO PROCEED.—Paragraph 2 of rule VIII of the Standing Rules of the Senate is amended by striking "to proceed to the consideration of bills and resolutions are debatable." and inserting the following: "to proceed to the consideration of any matter, and any debatable motion or appeal in connection therewith, shall be limited to not more than 4 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees except for—

"(a) a motion to proceed to a proposal to change the Standing Rules which shall be debatable; and

"(b) a motion to proceed to executive session to consider a specified item of executive business and a motion to proceed to consider any privileged matter which shall not be debatable.".

(b) NO FILIBUSTER AFTER COMPLETE SUBSTITUTE IS AGREED TO.—Paragraph 2 of rule XXII of the Standing Rules of the Senate is amended by adding at the end the following:

"If a complete substitute amendment for a measure is agreed to after consideration under cloture, the Senate shall proceed to the disposition of the measure without intervening action or debate except one quorum call if requested.".

(c) ONE MOTION RELATED TO COMMITTEES ON CONFERENCE.—Rule XXVIII of the Standing Rules of the Senate is amended by adding at the end the following:

"10. (a) A single motion to disagree with a House amendment or amendments or insist on a Senate amendment or amendments, request a conference with the House, or agree to the conference requested by the House on the disagreeing votes of the two Houses, and authorize the Chair to appoint conferees on the part of the Senate shall be in order, shall not be divisible, and shall not be subject to amendment.".

(d) TIME PRE-CLOTURE.—Paragraph 2 of rule XXII of the Standing Rules of the Senate is amended—

(1) in the first undesignated subparagraph—

(A) by inserting "for a measure, motion, or other matter that is subject to amendment, at any time after the end of the 12-hour period beginning at the time the Senate proceeds to consideration of the measure, motion, or other matter and, for any other measure, motion, or other matter," before "at any time";

(B) by striking "any measure" and inserting "the measure"; and

(C) by striking "one hour after the Senate meets on the following calendar day but one" and inserting "24 hours after the filing of the motion"; and

(2) in the third undesignated subparagraph, by striking the second sentence and inserting "Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk 12 hours following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least 1 hour prior to the beginning of the cloture vote if an amendment in the second degree.".

(e) ABILITY OF SENATORS TO OFFER AMENDMENTS.—Rule XV of the Standing Rules of the Senate is amended by adding at the end the following:

"6. (a) If cloture is invoked on a measure or matter that is subject to amendment, each Senator who has not offered an amendment during consideration of the measure or matter may offer 1 amendment to the measure or matter (without regard to whether the amendment is actually pending and notwithstanding the expiration of the time for consideration of the measure or matter under paragraph 2 of rule XXII or any other rule of the Senate) if—

"(1) the Senator submitted written notice of the intent of the Senator to offer an amendment in accordance with this paragraph not later than 12 hours after the filing of the motion to invoke cloture on the measure or matter; and

"(2) the amendment is timely filed, germane, and otherwise meets the requirements for an amendment under paragraph 2 of rule XXII.

"(b) If a Senator fails to submit written notice in accordance with subparagraph (a), the right to offer an amendment under this paragraph is forfeited.

"(c) An affirmative vote of three-fifths of the Senators duly chosen and sworn shall be required to sustain an appeal of a ruling by the Chair that an amendment offered under this paragraph is not germane.".

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3) was rejected.

The PRESIDENT pro tempore. The question is now on agreeing to S. Res. 15.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second. There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Indiana (Mr. COATS), the Senator from Oklahoma (Mr. COBURN), and the Senator from South Carolina (Mr. GRAHAM).

The PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 78, nays 16, as follows:

[Rollcall Vote No. 1 Leg.]

YEAS—78

Alexander	Franken	Merkley
Ayotte	Gillibrand	Mikulski
Baldwin	Grassley	Moran
Barrasso	Hagan	Murkowski
Baucus	Harkin	Murphy
Begich	Heinrich	Murray
Bennet	Heitkamp	Nelson
Blumenthal	Hirono	Portman
Blunt	Hoeven	Pryor
Boozman	Inhofe	Reed
Boxer	Isakson	Reid
Brown	Johanns	Roberts
Cantwell	Johnson (SD)	Rockefeller
Cardin	Kaine	Schatz
Carper	Kerry	Schumer
Casey	King	Shaheen
Cochran	Kirk	Stabenow
Collins	Klobuchar	Tester
Coons	Lautenberg	Thune
Corker	Leahy	Udall (CO)
Cornyn	Levin	Udall (NM)
Donnelly	Manchin	Warner
Durbin	McCain	Warren
Enzi	McCaskill	Whitehouse
Feinstein	McConnell	Wicker
Fischer	Menendez	Wyden

NAYS—16

Crapo	Lee	Sessions
Cruz	Paul	Shelby
Flake	Risch	Toomey
Hatch	Rubio	Vitter
Heller	Sanders	
Johnson (WI)	Scott	

NOT VOTING—6

Burr	Coats	Graham
Chambliss	Coburn	Landrieu

The PRESIDENT pro tempore. The 60-vote threshold having been achieved, the resolution is agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The resolution (S. Res. 15) reads as follows:

S. RES. 15

Resolved,

SECTION 1. CONSIDERATION OF LEGISLATION.

(a) MOTION TO PROCEED AND CONSIDERATION OF AMENDMENTS.—A motion to proceed to the consideration of a measure or matter made pursuant to this section shall be debatable for no more than 4 hours, equally divided in the usual form. If the motion to proceed is agreed to the following conditions shall apply:

(1) The first amendments in order to the measure or matter shall be one first-degree amendment each offered by the minority, the majority, the minority, and the majority, in that order. If an amendment is not offered in its designated order under this paragraph, the right to offer that amendment is forfeited.

(2) If a cloture motion has been filed pursuant to rule XXII of the Standing Rules of the Senate on a measure or matter proceeded to under this section, it shall not be in order for the minority to propose its first amendment unless it has been submitted to the Senate Journal Clerk by 1:00 p.m. on the day following the filing of that cloture motion, for the majority to propose its first amendment unless it has been submitted to the Senate Journal Clerk by 3:00 p.m. on the day following the filing of that cloture motion, for the minority to propose its second amendment unless it has been submitted to the Senate Journal Clerk by 5:00 p.m. on the day following the filing of that cloture motion, or for the majority to propose its second amendment unless it has been submitted to the Senate Journal Clerk by 7:00 p.m. on the day following the filing of that cloture motion. If an amendment is not timely submitted under this paragraph, the right to offer that amendment is forfeited.

(3) An amendment offered under paragraph (1) shall be disposed of before the next amendment in order under paragraph (1) may be offered.

(4) An amendment offered under paragraph (1) is not divisible or subject to amendment while pending.

(5) An amendment offered under paragraph (1), if adopted, shall be considered original text for purpose of further amendment.

(6) No points of order shall be waived by virtue of this section.

(7) No motion to commit or recommit shall be in order during the pendency of any amendment offered pursuant to paragraph (1).

(8) Notwithstanding rule XXII of the Standing Rules of the Senate, if cloture is invoked on the measure or matter before all amendments offered under paragraph (1) are disposed of, any amendment in order under paragraph (1) but not actually pending upon the expiration of post-cloture time may be offered and may be debated for not to exceed 1 hour, equally divided in the usual form. Any amendment offered under paragraph (1) that is ruled non-germane on a point of order shall not fall upon that ruling, but instead shall remain pending and shall require 60 votes in the affirmative to be agreed to.

(b) SUNSET.—This section shall expire on the day after the date of the sine die adjournment of the 113th Congress.

SEC. 2. CONSIDERATION OF NOMINATIONS.

(a) IN GENERAL.—

(1) POST-CLOTURE CONSIDERATION.—If cloture is invoked in accordance with rule XXII of the Standing Rules of the Senate on a nomination described in paragraph (2), there shall be no more than 8 hours of post-cloture consideration equally divided in the usual form.

(2) NOMINATIONS COVERED.—A nomination described in this paragraph is any nomination except for the nomination of an individual—

(A) to a position at level I of the Executive Schedule under section 5312 of title 5, United States Code; or

(B) to serve as a judge or justice appointed to hold office during good behavior.

(b) SPECIAL RULE FOR DISTRICT COURT NOMINEES.—If cloture is invoked in accordance with rule XXII of the Standing Rules of the Senate on a nomination of an individual to serve as a judge of a district court of the United States, there shall be no more than 2 hours of post-cloture consideration equally divided in the usual form.

(c) SUNSET.—This section shall expire on the day after the date of the sine die adjournment of the 113th Congress.

STANDING ORDER

Mr. REID. Mr. President, I ask unanimous consent for the Republican leader and me to have a brief colloquy about the application of the standing order related to motions to proceed and nominations that the Senate will consider. The template for this order was a bipartisan proposal developed by Senators LEVIN and MCCAIN and other Members on both sides of the aisle.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCONNELL. The proposal, as initially developed, provided that the bill managers and the floor leaders of the respective parties would be able to offer one amendment each if the motion to proceed to a matter were employed as it is available in the standing order. The majority leader and I thought it important not to codify who would offer those amendments on each side of the aisle.

Mr. REID. In addition, the amendment process set out in this order is not to be understood as establishing a ceiling for offering amendments, but instead setting a floor for offering them. The order sets out a structure for beginning the amendment process, not ending it.

Mr. MCCONNELL. I agree. The Senate works best when all Members have a reasonable opportunity to offer amendments and put forth the views of their constituents.

Mr. REID. And although the order provides that in the amendment sequence, the majority party has the ability to offer the last amendment, the majority will not use that last amendment to eliminate or remove language, if any, that the minority was able to add to the underlying matter through the Senate adopting any of the minority's preceding amendments.

Mr. MCCONNELL. On the subject of nominations, Senate Republicans will continue to work with the majority to process nominations, consistent with the norms and traditions of the Senate. One of those customs is for home-State senators to be consulted on, and approve of, nominations from their States before the committee on the Judiciary moves forward with considering those nominations, be it a nomination to serve as a U.S. Attorney, U.S. Marshall, or judicial officer. It is my understanding that the order does not change, in any way, the Senate's "blue slip" process.

Mr. REID. I agree. Furthermore, it is our expectation that this new process for considering nominations as set out in this order will not be the norm, but that the two leaders will continue to work together to schedule votes on nominees in a timely manner by unanimous consent, except in extraordinary circumstances.

Mr. MCCONNELL. Finally, I would confirm with the majority leader that the Senate would not consider other resolutions relating to any standing order or rules this Congress unless they went through the regular order process?

Mr. REID. That is correct. Any other resolutions related to Senate procedure would be subject to a regular order process including consideration by the Rules Committee.

Mr. MCCONNELL. I thank the majority leader for confirming my understanding of the application of the standing order.

Mr. REID. In addition to the standing order, I will enforce existing rules to make the Senate operate more efficiently. After reasonable notice, I will insist that any Senator who objects to consent requests or threatens to filibuster come to the floor and exercises his or her rights himself or herself. This will apply to all objections to unanimous consent requests. Senators should be required to come to the floor and participate in the legislative process—to voice objections, engage in debate, or offer amendments.

In addition, Rule XXII makes provision for 30 hours of debate after cloture is invoked. Within the 30 hours, Senators have strict limitations on the amount of time each Senator is allowed to speak. These limits should be enforced and Rule XXII further says, "After no more than thirty hours of debate," so 30 hours will be considered the outside limit of post-cloture debate time.

Finally, we will also announce that when the majority leader or bill manager has reasonably alerted the body of the intention to do so and the Senate is not in a quorum call and there is no order of the Senate to the contrary, the Presiding Officer may ask if there is further debate, and if no Senator seeks recognition, the Presiding Officer may put the question to a vote. This is consistent with precedent of the Senate and with Riddick's Senate Procedure, 1992. See page 716 in Riddick's and footnotes 385 and 386 on page 764. This can be done pre-cloture or post-cloture on any amendment, bill, resolution or nomination.

Mr. MCCONNELL. This is consistent with the precedent of the Senate with the understanding that Senators are given the timely notification of the Presiding Officer's intention so that they will be able to come to the floor to exercise their rights under the rules.

MOTION TO PROCEED

Mr. MCCAIN. Mr. President, I ask that Senators ALEXANDER and BARRASSO engage in a colloquy with me about our understanding of the operation of the standing order that the Senate just adopted related to motions to proceed and nominations, and our intent in drafting it.

The prospect of the majority, for the first time, changing the Standing Rules of the Senate by violating the provisions of those very rules was jarring to me and several of my colleagues, on both sides of the aisle, who care about this institution and the uniquely important role it serves in our Republic. Use of this unprecedented tactic for changing the standing rules would be a nuclear option, for it would irreparably damage the institution just to accommodate the desires of the current majority. Over the years Senators of both parties have eloquently stated where doing this would, in the words of the current majority leader in 2005, be: "The end of the U.S. Senate."

Mr. MCCAIN. Some of the most vociferous proponents of this approach have never served in the minority. They do not appreciate that the course of action they were urging, if undertaken, ultimately would be to their disadvantage when they served in the minority, which inevitably some of them will. So Senators ALEXANDER, BARRASSO and I, along with our former colleague, Jon Kyl, began working with like-minded Members of the majority to diffuse this situation to meet the goals of making it easier for the majority to bring legislation to the floor and making it easier for a member of the minority to offer amendments to that legislation. We worked together to develop recommendations for the majority and minority leaders which we all believed would allow the Senate to function in a fairer and more effective way.

Mr. ALEXANDER. The Senate works best when committee-approved bills move to the floor in an orderly way and Senators are freely able to debate and amend and vote upon the legislation. Unfortunately, under the current Democratic majority, committee work has been marginalized, as the majority has too often bypassed committees in the legislative process.

And on the Senate floor, the twin hallmarks of the Senate, the right to debate and the right to amend legislation, are barely recognizable: to an unprecedented extent the majority has moved to shut off debate on a matter as soon as the Senate has begun to take up the matter, and it has blocked Members—of both parties—from offering their legislative ideas for the body to consider.

The proposal we developed addressed a concern of the majority—namely, the ability of a majority to take up a matter—but it conditioned its ability to bring that matter to conclusion by giving the minority the right to have the Senate consider at least two amendments of the minority's choosing—without any requirement of germaneness—as well as two amendments of the majority's choosing.

The minority, in fact, would get to offer the first amendment under this procedure. And while the majority would get to offer the last amendment, all eight of the Members who developed this idea—four Republicans and four Democrats—agreed that the majority could not use its final amendment to strike or eliminate legislative language, if any, that the Senate adopted from one of the minority's amendments.

Mr. MCCAIN. That is correct. And I want to underscore that the amendment construct we developed is not to be used as a ceiling to limit the ability of Members of the majority or the minority to offer just two amendments per side. Rather, we intend it to be used as an amendment floor—a minimum guarantee of amendments—that would serve to start the amendment process so as many Members as possible could participate in that process. Having a robust amendment process, especially on legislation of major consequence, is how the Senate has traditionally operated. It is something that has been sorely lacking for the last several years. And it is something that, when it has occurred, has invariably led to legislative achievement. It is for the purpose of strengthening the right to amend legislation that we helped draft the new procedure of a majority motion to proceed. If the majority instead begins to use this procedure to limit the minority to just two amendments before seeking to bring consideration of a bill to a close, then we would view that as an abuse of this procedure. It would break faith with us who worked in good faith. Under those circumstances, we would oppose cloture on the bill and would urge that our colleagues do the same.

Mr. ALEXANDER. I strongly agree with the understanding of my friend, the senior Senator from Arizona. I, too, would oppose cloture on a matter if the majority abused the motion to proceed set out in the order by using that procedure as the high-water mark for the consideration of amendments, rather than as a starting point for a robust amendment process.

Mr. BARRASSO. I agree with the views expressed by my good friends from Arizona and Tennessee. They and I, and our Democratic colleagues, worked in good faith on the concepts embodied in the order the Senate has just adopted. I am hopeful that the majority will use the procedures in this order in harmony with our good intentions. If not, I will oppose cloture on legislation or nominations.

The PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, thank you very much.

We are going to have one more vote tonight. The next vote will be on Sandy and matters relating to Sandy on Monday night at 5:30.

I have spoken with the soon-to-be chair of the Foreign Relations Committee and Ranking Member CORKER. We are going to have a vote after the business meeting sometime on Tuesday on the new Secretary of State.

The PRESIDENT pro tempore. The question is on agreeing to S. Res. 16.

Mr. CORKER. I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second? There appears to be a sufficient second. There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Indiana (Mr. COATS), the Senator from Oklahoma (Mr. COBURN), and the Senator from South Carolina (Mr. GRAHAM).

The PRESIDING OFFICER (Mr. KING). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 86, nays 9, as follows:

[Rollcall Vote No. 2 Leg.]

YEAS—86

Alexander	Gillibrand	Mikulski
Ayotte	Grassley	Moran
Baldwin	Hagan	Murkowski
Barrasso	Harkin	Murphy
Baucus	Hatch	Murray
Begich	Heinrich	Nelson
Bennet	Heitkamp	Portman
Blumenthal	Heller	Pryor
Blunt	Hirono	Reed
Boozman	Hoeven	Reid
Boxer	Inhofe	Risch
Brown	Isakson	Roberts
Cantwell	Johanns	Rockefeller
Cardin	Johnson (SD)	Schatz
Carper	Kaine	Schumer
Casey	Kerry	Shaheen
Cochran	King	Stabenow
Collins	Kirk	Tester
Coons	Klobuchar	Thune
Corker	Landrieu	Toomey
Cornyn	Lautenberg	Udall (CO)
Crapo	Leahy	Udall (NM)
Donnelly	Levin	Vitter
Durbin	Manchin	Warner
Enzi	McCain	Warren
Feinstein	McCaskill	Whitehouse
Fischer	McConnell	Wicker
Flake	Menendez	Wyden
Franken	Merkley	

NAYS—9

Cruz	Paul	Scott
Johnson (WI)	Rubio	Sessions
Lee	Sanders	Shelby

NOT VOTING—5

Burr	Coats	Graham
Chambliss	Coburn	

The PRESIDING OFFICER. On this vote the yeas are 86 and the nays are 9. Two-thirds of those voting having voted in the affirmative, the resolution is agreed to.

Mr. REID. Mr. President, I move to reconsider the vote and lay that motion on the table.

The motion to lay on the table was agreed to.

The resolution (S. Res. 16) reads as follows:

S. RES. 16

Resolved,

SECTION 1. BIPARTISAN CLOTURE ON THE MOTION TO PROCEED.

Rule XXII of the Standing Rules of the Senate is amended by inserting at the end the following:

"3. If a cloture motion on a motion to proceed to a measure or matter is presented in accordance with this rule and is signed by 16 Senators, including the Majority Leader, the Minority Leader, 7 additional Senators not affiliated with the majority, and 7 additional Senators not affiliated with the minority, one hour after the Senate meets on the following calendar day, the Presiding Officer, or the clerk at the direction of the Presiding Officer, shall lay the motion before the Senate. If cloture is then invoked on the motion to proceed, the question shall be on the motion to proceed, without further debate.".

SEC. 2. CONFERENCE MOTIONS.

Rule XXVIII of the Standing Rules of the Senate is amended—

(1) by redesignating paragraphs 2 through 9 as paragraphs 3 through 10, respectively;

(2) in paragraph 3(c), as so redesignated, by striking "paragraph 4" and inserting "paragraph 5";

(3) in paragraph 4(b), as so redesignated, by striking "paragraph 4" and inserting "paragraph 5";

(4) in paragraph 5(a), as so redesignated, by striking "paragraph 2 or paragraph 3" and inserting "paragraph 3 or paragraph 4";

(5) in paragraph 6, as so redesignated—

(A) in subparagraph (a), by striking "paragraph 2 or 3" and inserting "paragraph 3 or paragraph 4";

(B) in subparagraph (b), by striking "paragraph (4)" each place it appears and inserting "paragraph (5)"; and

(6) inserting after paragraph 1 the following:

"2. (a) When a message from the House of Representatives is laid before the Senate, it shall be in order for a single, non-divisible motion to be made that includes—

"(1) a motion to disagree to a House amendment or insist upon a Senate amendment;

"(2) a motion to request a committee of conference with the House or to agree to a request by the House for a committee of conference; and

"(3) a motion to authorize the Presiding Officer to appoint conferees (or a motion to appoint conferees).

"(b) If a cloture motion is presented on a motion made pursuant to subparagraph (a), the motion shall be debatable for no more than 2 hours, equally divided in the usual form, after which the Presiding Officer, or the clerk at the direction of the Presiding Officer, shall lay the motion before the Senate. If cloture is then invoked on the motion, the question shall be on the motion, without further debate.".

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business with Senators allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE FUNDING

Mr. REID. Mr. President, 2 years ago my friend the Republican leader and I expressed our intention that the funding allocation adopted for the 112th Congress would serve for that and future Congresses. Over the prior 20 years, the apportionment of committee funding had gone from a straight two-thirds for majority and one-third for minority during the 1990s, regardless of the size of the majority and minority, to biannual negotiations during the following decade. The new funding allocation for Senate committees was based on the party division of the Senate, with 10 percent of the total majority and minority salary baseline going to the majority for administrative expenses. However, regardless of the party division of the Senate, the minority share of the majority and minority salary baseline will never be less than 40 percent, and the majority share will never exceed 60 percent. This approach met our needs for the last Congress, and I would like to see it continue.

Mr. McCONNELL. Mr. President, I, too, would like to continue this approach for the 113th and future Congresses. It serves the interest of the Senate and the public by helping to retain core committee staff with institutional knowledge, regardless of which party is in the majority. We made a transition in the last Congress to restore special reserves to its historic purpose, but appropriations cuts prevented special reserves from being funded. To the extent possible, we should try to fund special reserves in order to be able to assist committees that face urgent, unanticipated, nonrecurring needs. We know that we will continue to face tight budgets for the foreseeable future, and we have to bring funding authorizations more in line with our actual resources while ensuring that committees e able to fulfill their responsibilities. I look forward to continuing to work with my friend the majority leader to accomplish this.

Mr. REID. I thank my friend the Republican leader and ask unanimous consent that a joint leadership letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT LEADERSHIP LETTER

We mutually commit to the following for the 113th Congress:

The budgets of the Committees of the Senate, including Joint and Special Committees, and all other subgroups, shall be apportioned to reflect the ratio of the Senate as of this date, including an additional ten percent (10%) from the majority and minority salary baseline to be allocated to the Chairman for administrative expenses, to be determined by the Rules Committee.

Special Reserves has been restored to its historic purpose. Requests for funding will only be considered when submitted by a Committee Chairman and Ranking Member for unanticipated, non-recurring needs. Such requests shall be granted only upon the approval of the Chairman and Ranking Member of the Rules Committee.

Funds for Committee expenses shall be available to each Chairman consistent with Senate rules and practices of the 112th Congress.

The Chairman and Ranking Member of any Committee may, by mutual consent, modifying the apportionment of Committee funding and office space.

The division of Committee office space shall be commensurate with this funding agreement.

TRIBUTE TO REV. JOHNNY SCOTT

Mr. DURBIN. Mr. President, Reverend Johnny Scott has announced his retirement after 31 years as president of the NAACP East St. Louis Chapter. As a faith leader, businessman, civil rights activist, husband and father, Rev. Scott has dedicated his life to justice and equality. He is a man who cares about making sure things are done right. East St. Louis—my hometown—is a better place for Reverend Scott's years of service.

A native of Indianola, MS, Johnny Scott went to Mildred Louise Business