with my views and I understand that. But the Senator allowed the minority on the committee to have its voice heard, to ask our questions, and the Senator called some great hearings. We had some of the best minds in the country provide testimony before the budget committee. The Senator allowed and called the administration witnesses and we were able to examine them about how they were managing the country's money. The Senator allowed that to happen in the great tradition of the Senate where we have open debate and honest questioning. The Senator was always a perfect gentleman, and always able, as I think the Presiding Officer would acknowledge, to give a little levity to a tense situation. The Senator has a great sense of humor that really endeared him to me.

So I will say to Senator CONRAD, thank you for your service. I believe every member of the budget committee, Republican and Democrat, appreciated the Senator's leadership. I know they did. I know the staff also respected the Senator's leadership. We had a great time working with the Senator's professional team. The Senator served his country exceedingly well dealing with the greatest issue we face today, our financial debt situation. I hope and I am confident the Senator will remain active, that he will not be silent, that he will provide continual input and advice to the Members of Congress as we wrestle with these tough issues.

Mr. CONRAD. I wish to say thanks to my colleague, Senator SESSIONS. He will still be on the Budget Committee. These challenges remain. I will lend my voice in whatever way I can to the responsible efforts that are needed to get us back on track. It is truly my fondest wish that we find a way to come together to do what must be done. It would be so good for the country. It would be great for the Congress. It would be good for the people. I am confident this is a challenge we can meet.

I thank the Senator.

Mr. SESSIONS. Mr. President, I will repeat my admiration and affection for the Senator from North Dakota and appreciation for his leadership.

The PRESIDING OFFICER. The Senator from Alabama.

A MOST DYSFUNCTIONAL SENATE

Mr. SESSIONS. Mr. President, I want to say some things that are pretty hard right now. I say them out of affection and concern for the Senate of the United States and for the way we are conducting the people's business. I believe they ought to be heard and all of us ought to think about them. Some of our new Members have not been involved in a Senate that functioned differently than the one in which we are participating today. They do not know how a real Senate should operate. We have gradually, and at a very accelerated pace in more recent years, made some very unwise choices about how we do the people's business.

This has been the most dysfunctional Senate in history. The majority has abused and altered the powers and duties of the Senate more than at any time in history, to the detriment of the institution and to the detriment of the public interest.

That is a hard thing to say, but I truly believe something very unfortunate has been occurring and people have not talked about it. I would also criticize the Republicans a bit here because we are supposed to be the loyal opposition. The majority always has pressures on it to advance an agenda and the loyal opposition has the duty to advocate for its views and make sure the institution is handled in a way that protects the institution as the majority seeks to advance its agenda. Frankly, I do not think we have done a good enough job at that. But I would say the majority is using tactics—I refer to them as postmodern tactics—to advance an agenda. And in so doing has done damage to the institution.

Our leader, Senator REID, will not acknowledge a single error in his aggressive leadership and movement of legislation. He simply blames all the problems on Republicans who, he says, are obstructing his vision, his goals, and the agenda that he and his team want to advance. Not satisfied that these actions have brought the Senate to one of its lowest levels of public respect in history, if not the lowest, the majority party is now demanding even more power.

The majority leader and the majority are threatening to violate the rules of the Senate and change the rules of the Senate so they can grab even more power. I would say the majority leader himself has obtained more power than any leader in history, and now it appears that he is asking for more.

We don't like to talk about this. We are reluctant to talk about what is happening and be as critical as I am today, but in fact we have been silent too long. The bottom line is that this issue is not just about politics. This issue is about the historic role of the Senate and our constitutional order.

This Senate is not functioning as it should, and that is for sure; we all may agree on that. The question is, Why? Perhaps it was due to the 2010 election when the Democrats took a shellacking and lost six Senate seats. At that point there seemed to be a doubling down of the desire and ability of the majority leadership to dominate this institution. Actual Senate rules and actual codified law—and certainly the traditions of the Senate—were eroded. They were changed and run over.

The Republicans who fought back were called obstructionists. I don't know, but maybe when someone has been in power for a long time—as the leadership and the Democratic side has—they begin to think they are entitled to get all these things done. They believe they are entitled to bring up bills and not have Senators offer amendments so they can slow down the train and pick and choose what amendments the opposition can offer and how long they can debate. Maybe this goes in their mind in a way that when they get in that cocoon of power, everybody becomes an obstructionist when they simply insist on the rules of the Senate.

I always thought one of Senator REID's charms—the old HARRY REID I knew—was that he could actively and aggressively talk politically and stick it to the opposition. He always got to the point. Sometimes I could admire his skills. He could do it with a smile. We all tolerate a little political license and a certain amount of political exaggeration in the world we live in, but I thought Senator REID would not seek to advance powers beyond what he understood were the limits of the majority in the Senate because he has been in the minority, and he has operated there. He had to fight for his rights to have full minority rights. So I am a little baffled. I am not sure I understand this new Senator REID, and I am not sure all of the decisions he is making are good.

Now we are talking about a nuclear option that would break the rules of the Senate to change the rules of the Senate. That is a very dangerous thing, and I do not believe it is necessary.

Let me describe what is happening. I want to make a complaint about how this Senate has been operating. I said it is dysfunctional. The majority has said the reason it is dysfunctional is because Republicans object too much and they are obstructionists. Let me point out some of the things that are actually occurring.

First, I would dispute that. I don't believe it is accurate that Republicans object too much and are obstructionists. I don't believe Republicans are any more vigorous in their defense of their ideas than the Democrats were when they were in the minority when I came to the Senate 16 years ago. I know they were not. So it is the little constraints that we operate under every day, such as rules, tradition, actual statutory law that controls how we conduct our business that are being eroded, gone around, and run over. These are the things that make the institution what it is. A person has to be able to accept the fact that those who disagree with them have at least some power and a right to have their voices and ideas heard and their amendments brought up. That is one of the great traditions of the Senate.

So I say—sort of metaphorically—I am going to tack on the walls of the Senate a few charges. I don't take pleasure in this, but it is time to tell the truth about it.

First, to a degree unknown in the history of the Senate, the majority leader has used his power under rule XIV to bring bills straight to the floor without normal committee process. They are violating and avoiding the

process that goes on in committee where Members offer amendments, have debates, call expert witnesses, and consider these things. It may take weeks or months, but finally a bill ripens and it is then brought to the floor.

The majority leader does have the power under rule XIV to bring a bill to the floor without having had that committee process. The committee process is public, the debate is transcribed, and the amendments in the committee are voted on and recorded. It holds the Senators accountable so the public and their constituents know what they have done, how a bill is progressing, and at the end of the day whether they think they like it or not.

For example, this last-minute fiscal cliff tax legislation didn't go through the committee process. It was a big, important piece of legislation. We have a finance committee that is supposed to debate and decide tax issues. That did not occur with this bill. Additionally, no amendments were allowed to this bill—because it was brought directly to the floor by the majority leader. It is a very bad process. We are too often using midnight-hour votes to ram through big, historic legislation that has never been fully debated. We didn't even have an opportunity to fully read the legislation the night before last. That is not the way to run the Senate. What we know now from a preliminary estimate from the Congressional Research Service is that 58 percent of the bills which came to the floor of the Senate did not come through committee during this Congress. Nearly 60 percent of the legislation was not brought through traditional Senate committee procedures, and that is not good.

Second, the majority leader and the majority were quick to block President Bush's recess appointment attempts. Some of them were dubious; some of them were probably OK. They had the majority. They have done nothing to defend the Senate's historic and constitutional role when President Obama made a much more blatant recess appointment. The institution itself was weakened by this act. The Senate has to defend its legitimate confirmation powers, and there is a limit on the President's ability to initiate recess appointments.

The majority leader—righteous to defend it against President Bush—who is now the leader of this institution, has allowed President Obama to weaken the confirmation process. That goes beyond just the politics of the moment. Maybe it furthers a long-term agenda, but clearly does harm to the long-term interest of the Senate.

Third, the majority has directly violated the formal role of the Senate and plain statutory law that requires the Senate to produce a budget every year. The Congressional Budget Act of 1974 sets up a public legislative process—a public process—by which both the House and Senate must openly confront the Nation's fiscal challenges every year and lay out a plan. For 3 years the majority in this Senate has refused to comply with the law simply to avoid public accountability.

The majority leader said it would be foolish to have a budget. Those are his words. Senator CONRAD, chairman of the Budget Committee, was clearly uneasy about this. Senator CONRAD was determined—at least in his committee, which I serve on with him—to bring up a budget. We were going to discuss it, mark it up, and then it would be up to the majority leader whether he would ever bring it to the floor because he didn't bring it to the floor the year before.

We have now gone 3 years without bringing a budget to the floor. Apparently, the majority had a caucus within a day of the Budget Committee markup occurring. My staff had studied it, made amendments, and we were going to offer ideas to the budget. But the markup was canceled. Only a shell of this matter went forward. There were no votes, no formal budget process or budget offered. That is directly contrary to the statute of the United States.

The Budget Act requires an open process with committee votes, floor votes, and 50 hours of debate in which Senators who propose or oppose a budget have to do so publicly and with accountably. People should be able to offer amendments so we can have a vote on them.

Senator REID was thinking it was foolish to have his Members actually have to vote on concrete budget proposals. He didn't want them to do so. Apparently, the previous election had not gone well enough, and he wanted to protect his Members from those votes. That is what he meant by being foolish. It was foolish politically for the Democratic Party, but certainly we know it was not foolish for the American people that the Senate would actually discuss the financial future of our country and bring up a budget. A budget can be passed with a simple majority. Republicans cannot filibuster a budget. They get to offer amendments—for a change around here—but they don't get to filibuster it. They get an up-or-down vote—50 votes—after 50 hours of debate.

The leader violated plain statutory law, which requires us to have a budget by April 15 because he didn't want his Members to be accountable, but he blames Republicans for being obstructionists.

Fourth, for the first time in history, the Senate has abdicated the most fundamental requirement of Congress: responsible management of the money that the American people send here. We violated that requirement. Not a single appropriations bill was brought to the floor this year—not 1. That is the first time in history. We researched this—there has never been a time in history when not a single appropriations bill was brought up before the Senate. Frequently we don't get them all done, so then a continuing resolution has to be passed to keep the government from being shut down.

Congress is supposed to pass the appropriations bills telling the President, and all his Cabinet people, how much money they have to spend in the next fiscal year that begins October 1 of every year. The President cannot spend any money Congress has not appropriated. That is a fundamental requirement of the Senate. That is not just an idle idea, it is a fundamental requirement.

So we get to the end of the year and nothing has been done so we passed a continuing resolution, a CR. We stacked 13 bills—1,000-plus pages of spending—in one continuing resolution, and we just funded the government with no amendments, no debate, and no discussion for 6 months. That is no way to run a government. Each one of those bills is supposed to be brought up: defense, highways, education, health care. People who have amendments are supposed to bring up ways to save money or spend more money on each one of those bills, and we are supposed to vote on them. For the first time in history we did not do that.

Perhaps this was a clever political maneuver. It avoided public debate and public accountability because we had an election coming up in November and we don't want to vote before an election.

Another example is the Defense Authorization Bill. The fiscal year concluded this year without us passing the Defense Bill. The Senate has passed the Defense Bill for 50 consecutive years. Yet, just a few weeks ago, well after the elections, we were finally able to pass the Defense bill.

The House has sent over a budget that lays out a firm financial course for America. They voted on that budget in public. They were prepared to defend and explain their budget. It would have changed the debt course of America. But what did the Senate do? Nothing. Did Republicans filibuster the budget? Did they block a budget from being brought up? No. Republicans demanded that we go through the process. We pleaded with them to have a budget hearing in the committee. We asked them to bring up the budget and noted that they have the power to pass a budget with a simple majority. That is a burden a majority party has, really—to bring up a budget and pass it. It is not easy. It is a challenge. But it is the first time we have ever gone 3 years—or maybe the first time ever we have gone through the situation in which they refused to even bring up a budget. We have had budgets fail in the past, but we haven't had one, to my knowledge, where we just go for years and refuse to even bring one up.

In that secret Budget Control Act deal, we set spending limits on most of the discretionary spending caps, but that is not a budget. There were no amendments. There were no public discussions, no committee hearings, no

floor debate, no 50 hours to deal with the great issues of our time.

One more point. The majority leader has been trigger-happy in filing cloture motions. We have altered the way the Senate operates. We have to plead with somebody to be able to get an amendment in the Senate today. It is amazing. This goes against the history of this institution.

The two great guarantees in the Senate, as Robert Byrd, the great majority leader and historian of the Senate, has said, are the right to debate and the right to amend. Those are fundamental. We are seeing an erosion of both.

So what does this cloture motion do? Senator REID said: I am going to bring up a certain bill, and the Republicans can have five amendments.

Well, we have 15 amendments we want to debate—maybe more—on a bill. Somebody reminded me that the Panama Canal bill had 80 votes to give away the Panama Canal. It eventually got two-thirds votes and passed. It went through weeks of debate and lots of amendments. That is what the Senate is about. Now they say no amendments. So that begins to cause a problem.

The majority leader says: You have to filibuster. You won't agree to my limited number of amendments. You are obstructing. I am going to file the bill and immediately file cloture to end debate. So 30 hours goes by, has the vote to end debate, and says: All this time, the Republicans have been filibustering. The Republicans are obstructing.

Mr. UDALL of New Mexico. Mr. President, would the Senator yield for a question I will ask through the Chair?

Mr. SESSIONS. I yield for a question.

The PRESIDING OFFICER (Mr. CARDIN). The Senator from New Mexico.

Mr. UDALL of New Mexico. The Senator from Alabama—I think we overlapped as attorneys general, and we are good friends—raised this whole issue, and he used the phrase, which has been frequently used on the Republican side, that—and we are getting to this place where we have the opportunity to change the rules. The phrase he keeps using is ''break the rules to change the rules.''

This goes to my question: Is the Senator aware that under the Constitution, and specifically article I, section 5, it says that the Senate may determine the rules of its proceedings?

As far as I know—and we have a letter we are going to have printed in the RECORD later—almost all constitutional scholars in this country as well as three Vice Presidents sitting up there where Senator CARDIN is sitting, presiding, have ruled that at the beginning of a Congress, on the first legislative day, the Senate is allowed to change the rules. And the Constitution trumps the Senate rules in that respect in that very early period.

So my question to the Senator from Alabama: Does not the Constitution trump the Senate rules?

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the Constitution does trump the Senate rules. But I would ask my colleague if he is aware of any kind of history of the Republic where we didn't follow the existing Senate rules, which say we should have a two-thirds vote before we change the rules.

Mr. UDALL of New Mexico. May I answer the question?

Mr. SESSIONS. I have the floor, and I will yield for a question in just a second.

But I am not aware of that ever happening. I would ask my good attorney general colleague, who is familiar and understands tradition and the power of precedent, what would keep a Republican majority next year—or if they were to obtain one in the Senate—from changing the rules again and again and again?

The tradition in this Senate has been that to change the rules, we use a two-thirds vote, and we have adhered to that rule. There have been some threats to do the nuclear option, they call it, to use a simple majority to change the rules of the Senate, but it has not happened. I think that is a dangerous thing.

I would also ask my colleague to consider that because he is a young and popular Senator, and he is going to be here a long time—longer than I—and he may be in the minority. That might be a dangerous thought and it may be unimaginable for him today, but it can happen. We had 55 Senators just a few years ago. In two cycles, the Republicans went from 55 to 40.

So I just would say to the Senator, be careful about this. I know the Senator believes in debating, and he is capable at it, and he doesn't want to be able to put us in circumstances that would endanger that.

The point I was making is this: The problem in the Senate is not fundamentally the rules of the Senate; the problem in the Senate is a desire by the majority to move its agenda with a minimum of objection and to eliminate frustrating procedures that obstruct their ability to do what they think is good for America.

But I had that view too. When we had the majority, we wanted to pass the Bush tax cuts, 99 percent of which were extended 2 nights ago—the Bush tax cuts, which were passed for a limited period of time—10 years. Why? Because it took 60 votes to pass the tax cuts and our Democratic colleagues didn't want those tax cuts passed. It was passed through the budget. We requested to only do a 10-year budget. So they were passed as part of the budget process with 50 votes, but they could only last 10 years and then they expire. So that is the rule. They got extended. President Obama extended them once, but we got to the end, and they were about to expire on January 1, and everybody's taxes were going to go up. We had to pass a law to keep that from happening, and a compromise eventually was reached where most of the taxes stayed where they were and the taxes on the rich went up. I guess that is democracy in America, the way the Senate is supposed to work.

Mr. WHITEHOUSE. Would the Senator yield for a question?

Mr. SESSIONS. I will yield to my former U.S. attorney colleague without yielding the floor. He is younger, and a fine member of the Judiciary Committee and a capable Member of the Senate.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I have a question for the distinguished Senator from Alabama, for whom I have very high regard. He has been my ranking member on the Judiciary Committee, and he is my ranking member on the Budget Committee, and we share the experience of having served as U.S. attorneys. I have great admiration for him.

I heard him say something that brought me to the floor, and that is that it has been the practice of the majority leader to seek to pick and choose amendments the minority may offer. My question to the distinguished Senator from Alabama is, does that not overstate the case? Can he identify a time when the majority leader has ever said to the minority party: You can bring up an amendment, but it has to be this one.

The reason I ask that question is because my understanding is that the effort to control the amendment process by the majority leader has been limited to two things: No. 1, the number of amendments, which makes a lot of sense when we consider that the very small bill to raise the minimum wage that Senator Kennedy offered when I first got here—I was sitting where Senator CARDIN from Maryland is now presiding watching this debate take place on the floor, and they got to over 100 amendments on a one- or two-page bill. The Senate could never get to the bill if Members had to spend the rest of the session going through all these amendments. So to limit the number of amendments seems reasonable.

The other restriction that I think sometimes the majority seeks to impose is that the amendments be germane. I know when I was working with a number of colleagues of the distinguished Senator from Alabama on trying to form a bipartisan solution to the cyber compromise, every time the Republicans and the Democrats got together, we would start our discussion with the same back-and-forth, and that would be the Republicans saying——

Mr. SESSIONS. Mr. President, reclaiming the floor.

Mr. WHITEHOUSE. Please do. The Senator from Alabama has heard my questions.

Mr. SESSIONS. This is a good question. Let me tell my colleague how it

happens in the real world of the minority party.

Senator REID will bring up a bill, and he will say he wants five amendments.

Senator MCCONNELL will talk to Republicans, and they will say: Well, we have 15 amendments. We have a lot of things we want to vote on, some of them germane and some of them not germane.

Nongermane amendments are a historic and critical part of the history of the Senate. You two advocates would never want to give that up. I don't think my colleagues would if they have thought it through. And we are not going to give it up. We are not going to give up nongermane amendments, but there are limits on nongermane amendments.

So Senator MCCONNELL says: Well, we have more amendments than that that we want.

Senator REID says: I am filing the bill, and I am filling the tree, and nobody is going to get an amendment I don't approve.

So we said: Well, we have 15.

OK, Senator REID says, I will take four.

Well, I have an amendment on immigration. I have one on taxes.

No, we are not going to vote on that one. We will take these three amendments, and that is it.

So Senator MCCONNELL and his staff are talking to the Senators, saying: You have five amendments; I can only get you one. He will not accept this amendment. I have been told explicitly that you will not get this amendment or that amendment.

That is happening every day. And he will file cloture immediately and say the Republicans are filibustering when all we are doing is disputing whether or not we get 5 or 15 amendments. What are we here for if not to debate and offer amendments? Do my colleagues mean, in the great Senate of the United States, a Senator can bring up a bill—maybe small in language, about the minimum wage, but it is a matter that invokes philosophical disputes—I will just say it that way.

For the bankruptcy bill, I think there were 60 amendments on that bill. It was a bitterly contested piece of legislation. We had a good number of amendments. Finally, when the Defense bill was brought up after the election just a few weeks ago we were able to get amendments. But still it was less than one would normally expect on a bill spending $600 billion. Well, at least we got amendments. The bill came up—it came out of committee unanimously.

They would not bring it up before the election mainly because we needed to fix the sequester. Senator REID did not want to talk about that, so he refused, for the first time in 50 years, to bring up the Defense bill. But it finally got brought up. It went through a fairly regular process. People got their amendments, and the bill passed overwhelmingly and will become law.

So that is what the Senate is all about. Talk to people who have been around here, and they will tell you that. I remember standing right there. Senator Specter was a great Senator with a fabulous legal mind. I wanted something. I wanted him to agree to put something in the bill, and he would not agree. He did not want any more amendments. He wanted to wrap it up and get the final vote.

We argued a bit back and forth, and he looked at me and said, in effect: Well, you are a Senator. If you want your amendment, you get your amendment. It interrupted his day, his schedule. But if I insisted, I got my amendment. You are a Senator; you get your amendment.

Well, Senator PAUL, he files a lot of amendments. But he is a Senator. He got elected in Kentucky saying he was going to come to Congress and shake up this place. But he does not get an amendment? Senator REID says: No, you do not get amendments, or you only get this one.

They tried to hold him off from offering an amendment to cut foreign aid. Do you remember that? He would not yield. It went on. He was threatened: You are stopping the bill; you are going to kill the bill. He would not back down.

Finally—finally—they gave him an amendment. It went down by a big vote. It did not pass, but he got to advocate and ask why we were giving aid to a country that was abusing the rights of its citizens, and so forth.

So that is what the Senate is all about. That is all I am saying. This idea of speed is dangerous if it is denying the right of members to debate and offer amendments—if it is altering the nature of this great institution.

Colleagues, I think as a practical matter we have had good success with stacking votes. So if a person wants to speak on a bill, they can speak at 6 or 7 or 8 o'clock at night, and the votes could be held the next morning. It does not take long to have votes, 15 minutes or so to have a vote. We could have more votes and people would be satisfied.

With regard to nongermane amendments, I would suggest they do not come up again and again and again. Somebody campaigned on not giving foreign aid to Egypt, and they came here and they wanted to have an amendment. No, you cannot have it. Well, they are not going to offer the amendment on every bill. They are not going to offer it every year. They just needed to be able to have the American people see this Congress vote on that issue. I think we are better off allowing that to happen than not.

Mr. UDALL of New Mexico. Mr. President, I ask through the Chair, will the Senator yield for an additional question?

Mr. SESSIONS. I will.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL of New Mexico. The Senator from Alabama, my good friend and former attorney general colleague, asked the question—when he was answering the last question I asked—has this constitutional procedure for determining Senate rules at the beginning of a Senate ever been used? Yes, in fact, it has been used, and it has been used a number of times.

I would point the Senator from Alabama to 1975. In 1975, we had the situation where a number of Democratic Senators were pushing for a change in the rules. The filibuster threshold at that point was 67 votes, unlike 60 today. Actually, that was the time period when they moved that threshold from 67 to 60.

What happened was 51 Senators took to the floor and three times voted down the attempt to move away from changing the rules.

Now, I would also note that three Vice Presidents—sitting up where Senator CARDIN, the Presiding Officer, is right now—have ruled that at the beginning of a Congress—at the beginning of a Congress—you are allowed, the Senate, 51 Senators, to step forward and say: We would like new rules.

What is being advocated on this side is putting rules in place and following the rules for a 2-year period of time.

Mr. SESSIONS. Mr. President, reclaiming the floor.

Mr. UDALL of New Mexico. For a 2-year period of time. And we are not——

Mr. SESSIONS. Reclaiming the floor, because I will yield the floor in a little bit, and the Senator can have an opportunity to talk, but I just want to follow up on that.

Was the final vote by two-thirds or not?

Mr. UDALL of New Mexico. The rule that was changed, when we lowered——

Mr. SESSIONS. I know we lowered the filibuster; a different Congress did. My question is, Was it a two-thirds vote or not?

Mr. UDALL of New Mexico. An accommodation was reached and——

Mr. SESSIONS. Right.

Mr. UDALL of New Mexico. And when the accommodation was reached, then the rule was changed.

Mr. SESSIONS. I like that.

Mr. UDALL of New Mexico. Now, the constitutional principle was made, and it has been acknowledged by three Vice Presidents, it has been used a number of times in the past. The reason we are doing this, as the Senator from Alabama knows, is that the amount of secret, silent filibusters that have occurred here has been extraordinary. LBJ had one. HARRY REID has had close to 400.

Mr. SESSIONS. Mr. President, reclaiming the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the Senator for his advocacy, but I do believe that final vote to change the rule was by a two-thirds vote. If you get a two-thirds vote, you can impose your will—when we do it. The question is, Can you change the rule by a simple majority?

I would say the Constitution does not say what the vote level should be, and it may be possible lawfully to ignore the Senate rule that says it takes a two-thirds vote to change the rules on the first day of session. It may be possible legally to do that.

But I would urge my colleagues not to do that. Just for short-term political gain, we are going to change the historic rules of the Senate, changing the rules of debate in this kind of way? It would be a dangerous alteration of the nature of the Senate, as so many of our more seasoned colleagues have warned us. I will just urge you not to do that.

I will say to both of my fine colleagues that an offer has been made, one I think I am not real happy with, by Senator MCCONNELL. Negotiations are under way now to try to resolve some of the difficulties that are ongoing. But I would urge you to pull back and not pull the trigger on what has been called the nuclear option—to use a simple majority to change the rules of the Senate—which could change the very nature of how we do business and the qualities of the Senate that make it different from the House. That is my concern there.

So the filling of the tree—one more thing I would like to say about that. I had a chart on it. I think Trent Lott used filling the tree eleven times; Bill Frist, fifteen; it was used one or two times by previous majority leaders. But it has grown, and Senator REID has filled the tree 70 times already.

Basically, without going into details, filling the amendment tree allows the majority leader to block amendments. Historically, there was no limit on amendments in the Senate. If a Senator had an amendment, he came to the floor and offered the amendment, and he would try to be courteous and not abuse his power, but he got a vote on the issues he believed were important.

We should not limit that. We should not have the majority leader rejecting certain amendments because he does not like them. Really the reason he rejects them is they are often tough amendments, uncomfortable votes for the Members of his conference, and he does not want a vote on a tough issue. So, he blocks it from ever being voted on to protect the Members from that.

I heard Senator MERKLEY—I see him on the floor—talk about his vision for a more open Senate. I have heard him talk about how he conducted himself as the speaker of the house in his home State and how it was more vigorous in debate, in open debate.

In sum, my colleagues, this is what has happened: The biggest change by far, the thing that is causing the angst in the Senate and disrupting the Senate—other than the majority's fundamental determination to avoid responsibility and avoid voting on the tough issues of this country; and that is a big one, and I have detailed that—but the fundamental thing is, this majority leader is consistently using the device of filling the tree to block the free flow of amendments, to reject certain amendments he does not like, and control the Senate in a way that is contrary to our history, contrary to our tradition, and contrary to the public interest.

We are having too much of the majority leader bringing up bills like this last fiscal cliff legislation. I warned months ago we were going to end up at the 11th hour and 59th minute. I wrote in the Wall Street Journal a month ago, they are waiting until the 11th hour, the 59th minute to bring up the bill so you have no amendments, you do not even get to read the thing—do not even get to read it. You get a summary of it—have to vote yes or no—or we go over the cliff. That is not the way this business ought to be done.

So I urge my good, vigorous colleagues, who believe in debate and openness, not to shut off debate, not to move in that direction, to focus on an open process by which these matters are debated openly and the American people can determine whom they agree with.

They might not like what I have to say. They might vote me out of office. I am sure it would make a lot of people happy.

Mr. MERKLEY. Mr. President, will my colleague yield for a question?

Mr. SESSIONS. I will yield briefly for a question without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. I appreciate my colleague coming to the floor and starting to talk about rules. As I was listening back in my office to the Senator's presentation, and he may have enhanced it while I was walking over here, but the Senator was noting, essentially, what sounds like a very one-sided piece of the puzzle; that is, that the majority leader or the floor manager is in a position of negotiating or restraining what amendments the minority does. However, the Senator might be unaware that it is actually two-sided in that it is traditional for the floor leader on the Senator's side or the minority leader, the Republican leader, to also veto the Democratic amendments. Of course, I have had untold dozens of my amendments vetoed from being presented.

So you have this negotiation that is taking place between the leaders on the two sides over what they will admit. That hits both sides equally, basically, because your amendments may be ruled out; my amendments may be ruled out. Your leader may actually not like your amendment, and may say to you: Well, the other side will never agree to your amendment. Actually, it may be your own leader killing it. That may happen on my side too; my leader saying: Oh, no, the other side will never negotiate over your amendment. They will never agree to it. Maybe it is on my own side.

Mr. SESSIONS. Mr. President, regaining the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. There is no constitutional power for a leader. I love MITCH MCCONNELL. He does not get to pick my amendments. Where did this come from? You just got elected. You have ideas. You ought to be able to come down here and advocate for your ideas. Traditionally, it has always been any Senator can offer an amendment.

As Arlen Specter said to me: Well, I do not agree, but you are a Senator. You want your amendment, you get your amendment.

That is the way the Senate is supposed to work. We will have done something dangerous if we get to the point where now I have got to go to Senator MCCONNELL and plead with him, and then he has got to go to Senator REID and say, well, Senator SESSIONS wants this amendment, he is insistent on it. Senator REID would then have to approve and then he comes to me and he approves? Where did this come from? I am just telling you—you need to think about how the Senate is supposed to operate. It may take a few more votes; it will take some more votes. But that would be better than this process of groveling around here, pleading with somebody to give you a minute. Amendments—we have spent days, I think, since both of you have been here—think about it—days—squabbling over amendments and not a single vote occurring.

To my colleague from Oregon, would the Senator disagree with this?

Mr. MERKLEY. Would the Senator yield?

Mr. SESSIONS. Would the Senator disagree?

Without yielding the floor, I yield for a question.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. I think my colleague from Mississippi——

Mr. SESSIONS. Alabama.

Mr. MERKLEY. Excuse me, I am sorry, Alabama. If the Senator listened to my floor presentation, he would know I already agree with much of what he said.

Mr. SESSIONS. I know the Senator does.

Mr. MERKLEY. And, indeed, I feel we need to have a process where amendments are considered. In a situation where neither side is vetoing the amendments of the other, I wanted to make sure that we completed the picture for the public that not only is the Democratic floor manager vetoing Republican amendments, but the Republican floor manager is vetoing Democratic amendments. It is because of this that the two end up in negotiation.

Mr. SESSIONS. Right. I think that is true.

Mr. MERKLEY. So I wanted it to be clear it is bipartisan.

Mr. SESSIONS. Reclaiming the floor, I think the Senator is correct. I would

say both—it is not good. Why should they be picking your amendments? Why should Senator MCCONNELL be picking your amendments? It is flabbergasting to me about how we came to this point. It is like a frog in the warming water. You have come to the process in the middle of it where the traditional rights of a Senator have been eroded, and you are trying to deal with that situation and craft a solution that is dealing with an alteration of our historical procedure. We should go back to those.

When I asked the question about time—and how few amendments we have and actually get votes on—I think people should understand what I am saying. The Senate will not slow down. It will not slow down if we have amendments. Most Senators will agree to make their arguments at a time when something else isn't happening on the floor. They get their vote, maybe the next day. I don't think that is the problem. The problem is leaders want to control the debate. I think those of us underlings sitting at the kiddie table, as somebody said, need to get in the game.

There is no constitutional power given to the majority leader or the minority leader. It is a matter of courtesy. As far as I am concerned, they work for us. They work for the Members of the Senate. We don't work for them, they work for us. They are supposed to facilitate our rights as Senators. We have acquiesced and allowed an erosion of those rights.

A person is not going to offer his amendment every month, every year. In a 2-year term, Senator PAUL stood in there and finally got his amendment on foreign aid to Egypt. He is not going to offer it again next week. He had his vote and he lost.

I think there is just as much a hullabaloo about nothing if we would turn, quit filling the tree, quit attempting to control the flow of amendments in this body, we would shock ourselves how much better this body operates. I am tired of having to ask people for permission to file an amendment. That is where we are, and you should not have to do it.

The majority leader has got 1 vote out of 100, and I have got 1 vote out of 100. They meet in secret; they plot this bill on taxes. It comes up at the 11th hour. We don't get to read it and we don't get to amend it. Every Senator here and their constituents has been diminished in power by having that happen. We have got to stand up, all of us, Republicans and Democrats, liberals and conservatives, and defend the system. It will be better if we let it run as it is supposed to run—good debate, good amendments, stand before the American people, be accountable for what you did, and go back home and defend your record.

I know there are some tough votes. It was a tough vote for me last night. I voted for that bill. I am not sure I did right, but I was confident it was the right thing to do. But I didn't like it because I didn't get to read it sufficiently. I didn't get to know what was in it sufficiently. It had things in it I didn't like. But in the long run I thought it was going to be best for the country to move this issue behind us and move on, so I would say that also.

The majority leader's sole power and strength comes from the ability to be recognized first. The majority basically selects Senator CARDIN to preside. They trust him to preside. When the majority leader hits the floor, Senator CARDIN is going to recognize the man who selected him. The majority leader of the majority party and all the presiding officers are members of the majority party—and I used to preside in that fashion when we had the majority. That is the way the system works.

I would conclude by telling my colleagues I have enjoyed this discussion and leave one bit of warning. If this were to go to the nuclear option and substantial changes were made to the free debate and the free right to amend in the Senate, this will not be accepted. It will be a historic and dramatic change in the nature of the Senate. This Senate—I have now talked to Members—will not go quietly. It will not be treated as a legitimate change. We will resist in every way possible, and we will have a most disagreeable and difficult time in the body. So I would urge my colleagues, keep working with this compromise and maybe something could come out of it. Everybody can accept advancing some of the ideas you would like and maybe dealing with some of the concerns I would like.

One more example of how this political body should operate was the Democratic majority—the minority, when President Bush was elected—decided to filibuster Federal judges for the first time, systematically filibuster them. They were holding up nine, I believe, judges of high order. It went on for weeks, over a year, as I recall. Senator Frist threatened that they would use this procedure, or something like it. The result of that was a Gang of 14 reached an agreement and said there wouldn't be a filibuster of judges except in extraordinary circumstances. So the nuclear option never took place, the rules were never changed, but Members of the body in a collegial fashion agreed that, okay, we won't eliminate filibusters entirely, but we will only do it in extraordinary circumstances.

I think the best wisdom at this point is to draw back from the nuclear option to see if we can improve the way the Senate works and at that point we could perhaps improve the institution without endangering its fundamental character.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, let me thank the Senator from Alabama for his comments today. I think they are helpful in moving us forward, and I hope very much that we can find a way to go forward without having to use the constitutional doctrine that at the beginning of each Congress the Senate has an opportunity to adjust its rules with 51 votes. I think that is constitutional doctrine at this point.

I reject the notion that it is breaking the rules to take advantage of that constitutional moment. But the Senator makes a fair point that from a point of view of precedent—very different than breaking the rules, but from the point of view of precedent—it sets a new standard that we should be very cautious about going to.

I strongly support the Senator's recommendation that there needs to be a more vibrant amendment process. I believe the status of the discussion is regarding the filibuster on the motion to proceed, that if the majority leader is able to move to procedure without a filibuster, there will be amendments under that rule. I think that is an important qualification as we go forward.

Mr. SESSIONS. Mr. President, would the Senator yield briefly?

Mr. WHITEHOUSE. I yield for a question.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I will tell the Senator my concern and ask the Senator if he has a thought about it. I am uneasy about giving, for the first time, explicit power——

Mr. WHITEHOUSE. Mr. President, may I reclaim the floor for one moment? I will yield the floor, not just for a question—I will yield the floor to the Senator from Alabama with the understanding that I will be recognized at the conclusion of the point he makes, so he does not have to frame it in the nature of a question.

The PRESIDING OFFICER. Without objection, the Senator from Alabama is recognized.

Mr. SESSIONS. My concern, which I have expressed in my conference, is I don't like the idea that we codify in the rules explicit supersenatorial power to a chairman and a ranking member of a committee, and we have almost no recognition in our rules of the majority leader. This is a tradition; this is a way we operate.

Each one of us is 1 of 100. We are equal in our responsibilities and in our ultimate voting power if we don't allow it to be eroded. As I understand the rule, there would be four amendments, you know, guaranteed up front by leaders. Think about that, as I know you will be active, both of you, in the discussion of how to write these compromises, and I am hopeful we will reach one. But I wouldn't, in a nonpartisan comment—I am not sure we ought to further embed in our rules superpowers to one Senator or another group of Senators. Has the Senator thought about that?

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. I appreciate the point the Senator from Alabama is commenting on, and I think it is important that we recognize that is a floor or a minimum number of amendments and not a ceiling. I think the more we can allow Senators amendments, the better institution this will be.

That said, the calendar is unyielding. Days come and days go, Congresses end, work periods end. The majority leader and minority leader have the responsibility for trying to fit the work into those time periods. Clearly there is the prospect of vexatious amendments, either in nature or in number, whose purpose is to interfere with their ability to manage the floor in a sensible way for all of us. I think we do have to be prepared to defend against that, and I think number and germaneness are the usual touchstones.

The story I was telling, when the Senator from Alabama reclaimed his time, was of the cyber negotiations. When the Republicans and Democrats met together, the opening moment of virtually every discussion was the Republicans saying, when we get this bill to the floor, there will be amendments, correct? We were saying, absolutely, that is our understanding, we will stand by you having your amendments, but let us have them be germane, let us have them be relevant to cyber. That was always kind of a mutual agreement going forward until a Senator came to the floor and gave notice that they would insist on a repeal ObamaCare amendment on any cyber bill. That threw a pretty big spanner into the works of what I thought was moving toward a good bipartisan solution there.

I think we have real problems here in terms of the abuse of the filibuster. When the majority leader can say that Lyndon Johnson as majority leader faced 1 filibuster, and this majority leader has, I think he said, 291 times—391 times had to file cloture, that is a pretty big change.

When you see judges who have been cleared in the Judiciary Committee unanimously sitting on the Executive Calendar in what has become a hostage pool for purposes of trading—these are judges who are ready to go, and there may very well be a judicial emergency in their district; they have Republican and Democratic support, and they are held hostage to be used as trading pieces on either judges or other issues—I think that is a very poor way to go about doing business, particularly when you consider where that leaves an individual who has put their life on hold waiting to see if they will be confirmed, and all they are is a pawn in a chess game, even though everybody thinks that substantively they are qualified and should serve as judges.

You see situations in which we have a cloture fight and then, when we actually have the vote, the measure passes with 90-plus votes. Clearly, there was not a great dispute over that. That is cloture being used for obstruction and to, I believe, take those 30-hour blocks of cloture time and stack them up into a wall of obstruction.

I will say one final thing and then I will yield the floor. The good Senator from Alabama mentioned the budget process, and he is our ranking member on budget, so he knows this very well, but I have to dispute his description of the budget not passing and of why the majority leader said it would be foolish to have a budget.

The reason it would have been foolish to have a budget is because we had a budget. In the ordinary course, a budget is developed from the committee up. We start in the Budget Committee. We propose a budget. It then goes to the Senate floor. We have budget day, which is often irreverently called a vote-arama, where we vote and vote and vote on amendments, and we ultimately get a budget. A similar process happens in the House. The President then has a budget to work with and we go forward.

In this case, because the question of the Nation's budget is such a hot political issue, the budget was negotiated at the very top, between the President and the Speaker and the Senate leadership, and it was passed into law. We didn't pass a budget; we passed a bill. We passed a law, and the law set the budget. So when your budget is being set by law, yes, it is a little foolish to go through the process as if none of that had happened and try to build a budget from the ground up when it has already been established by law and when we wouldn't change it with our budget procedures. It has already been established by law, by negotiations at the highest level.

So I think that is why it was foolish. I think the budget process will continue to go forward in circumstances in which we are building a budget from the ground up, the way we do in the ordinary course, but I do think it was important to clarify that.

With that said, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. If my colleague from Rhode Island would be willing to yield for a question, I do have a question for him.

Mr. WHITEHOUSE. I believe the Senator has the floor, but I will stay and engage in a brief colloquy, if that is the Senator's desire.

Mr. MERKLEY. We heard a few moments ago from our colleague from Alabama that the problem of the Senate being able to process bills is completely as a result of the inability to offer amendments. There are certain things that don't seem to quite square with that.

For one, is my recollection correct that we have had quite a few filibusters on judges where no amendments are relevant?

The PRESIDING OFFICER. Without objection, the Senator may proceed.

Mr. WHITEHOUSE. Yes; that is absolutely true. It is hard to amend a judge.

Mr. MERKLEY. Is the same true of efforts to get to a conference committee after we have already passed a bill and all the amendments have been previously considered?

Mr. WHITEHOUSE. That is also true. In fact, I believe there have been multiple filibusters of the various steps on the way to a conference committee, even after all amendments have been considered. So the Senator, I believe, is correct.

Mr. MERKLEY. Is the same true on both conference reports and final passage? Neither of those involve amendments, but have there been extensive filibuster efforts to keep this body from ever being able to complete one piece of business and move on to the next?

Mr. WHITEHOUSE. I think that is true, and nobody is more alert to this than the Senator from Oregon, but it is my belief there has been a little transformation in the nature of the filibuster. It always used to be the individual right of individual Senators to get up on their feet and to say their piece, to hold the floor for as long as they needed to and to speak themselves—to read the Bible, to read the Constitution, to read the phonebook—into exhaustion. They did so when they felt deeply about an issue, when they were deeply opposed to something on the floor.

Then cloture came along and it established a 30-hour block of time for debate. But, tellingly, it didn't require anyone to do any debating during those 30 hours. My belief is the minority party figured out if they filibustered everything, including very popular bills and amendments and judges that normally pass with huge majorities—up in the nineties—then each time the majority leader has to file cloture we end up with another 30-hour block of floor time that can't be used for anything productive. If that is done hundreds of times, that becomes thousands of hours of floor time, and it is very often why people who are watching us, expecting to see debates on the floor, see the tedious quorum call. They see our wonderful floor staff quietly reading the names of the Senators as the quorum call drones on and nothing is happening.

That puts immense pressure on the majority because they now have less and less and less time to work with because these 30-hour bites of time over and over again have been taken out of the year and it makes doing business very difficult.

That, I believe, has been the transformation. We have changed from being a Senate where an individual Senator has the right to get on his or her feet and oppose anything with a filibuster for as long as they can stand on their feet to a Senate where the minority filibusters everything, creating these 30-hour blocks of dead time

which puts great pressure on the body to try to get things done in the time that remains. That is my view of why we are where we are and why it is important to change the rules.

I will yield after saying I do think the Senator from Oregon and the Senator from New Mexico have done this body a great service by their leadership on pressing forward on rules changes. I think it is very clear that however this ends up turning out, the majority leader has 51 votes for a change to put the Senate back on a footing where it is behaving as a Senate again and we are not spending our time in the dead zone of endless quorum calls.

I yield the floor.

Mr. MERKLEY. I thank my colleague from Rhode Island for his very lucid commentary.

We do have a responsibility to enable this body to debate and decide issues in order to address the big issues facing America. It certainly is not the case that we have been fulfilling that responsibility. This is why the popularity of the Senate and the House has dropped to incredibly low levels, because people see there are big challenges in America—big challenges about investment and infrastructure, big challenges about the management of our military policy and our military provisioning, big challenges in regard to the environment, in regard to health, and certainly big challenges in regard to education. So no matter how long the list gets, we just get more and more and more paralyzed and unable to address anything in this body.

Tomorrow is the first day of the next legislative session and my colleague from New Mexico has arrived and I ask unanimous consent that we be allowed to engage in a colloquy.

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

EXTENSION OF MORNING BUSINESS

Mr. MERKLEY. Mr. President, I ask unanimous consent that morning business be extended until 4 p.m., with all other provisions remaining in effect.

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

Mr. MERKLEY. So my colleague from New Mexico has made this powerful case about our responsibility and about the opportunity provided under the Constitution, and I have been immersed in trying to wrestle with the components of how we actually seize that opportunity in terms of the substance, the material we put together to make this body work better. But the important thing is that tomorrow this begins.

In that regard, I yield to my colleague from New Mexico, who has been, again, at the forefront of calling for us not to bypass this opportunity to have this body engage in the debate and figure out how we can change the way we work so we can do the people's work as is expected.

Mr. UDALL of New Mexico. I thank my colleague very much, and let me say to my colleague from Oregon, who has been a real leader on this, he has been diligent, he has studied this, he cares about it, and he has been a great partner. The packages that were voted on the last time we helped put those together—and there were two very significant votes, as Senator MERKLEY realizes. We came very close. We had 44 votes for a package that would make 4 or 5 changes and then his package on the talking filibuster, which was included in both packages, received 46 votes. That showed that if we had the opportunity at the beginning of a Congress to change the rules under the Constitution, we were very close to the 51 votes.

I just want to comment on what my colleague from Rhode Island said earlier—Senator WHITEHOUSE—and repeat that because we have been counting the votes over the last couple months. We have been trying to determine if the votes are there in order to be able to change the rules, and we know at the beginning of a Congress that we need 51 votes.

I also want to respond to several things that were going on here earlier on the floor. Several Senators made statements, and several of those statements were from the other side. I believe they should be responded to because we are in this crucial phase in terms of adopting the rules.

The first issue that comes up is this issue of breaking the rules to change the rules. This has been what has been repeated numerous times in the last couple months with our Republican friends and colleagues coming to the floor. They use the phrase ''break the rules to change the rules.''

In fact, when we use the Constitution, there is no conflict with the Senate rules because three Vice Presidents have ruled from the chair, where Senator CARDIN is now sitting, that at the beginning of a Congress, on that first legislative day, we can change the rules, and we do it pursuant to the Constitution.

The Constitution, at article I, section 5, says the Senate can determine the rules of its proceedings. Every constitutional scholar I know of who has looked at this realizes that is the window—that first legislative day—in order to deal with the rules. So when, in fact, we legislate on that day in a rules context, we are not breaking the rules; we are creating the rules for the coming Congress—in this case, the 113th Congress. We are creating the rules that will govern.

Do I think we should use the Constitution to change the rules every couple weeks after we put rules in place? Of course not. That is not fair to do. We would never be advocating for adopting rules and then changing them every couple weeks or every couple months. In that situation, there is a high threshold to change the rules, as it says in the Senate rules.

But I want to engage in this colloquy with my colleague from Oregon, first of all, on this issue of the constitutional option and in terms of utilizing the constitutional option at the beginning of a Congress; putting the rules in place and then following the rules throughout the Congress. I ask my colleague: Isn't that the way we are intending to move?

Then, secondly, the heart of the matter—and this is where Mr. MERKLEY, the distinguished Senator from Oregon, has been instrumental in terms of helping us deal with the dysfunctional filibuster system we have right now—we have a secret filibuster. We have a silent filibuster—in fact, we have way too many filibusters. Just to give a little comparison, when LBJ—Lyndon Baines Johnson—was majority leader for 6 years in the 1950s, he had one cloture motion filed—one filibuster. HARRY REID, whose office is just a few feet from here, as the President pro tempore knows, comes to the floor and he has had close to 400 filibusters in his 6 short years. So they have gotten completely out of hand.

One of the things I want to talk to my good colleague, the Senator from Oregon, about, in addition to this constitutional option—the small window we have tomorrow on the first legislative day—is also how do we remedy this situation in the Senate? Everyone acknowledges the Senate has become dysfunctional; that we are not doing the work of the American people. We hear our Republican colleagues say they do not like the way it is working. So I ask: What is the best way to get to the heart of that? Is it the talking filibuster? Is it trying to change the rules on the motion to proceed? How do we get at the heart of what the problem is?

I yield for my colleague.

The PRESIDING OFFICER. Without objection, the colloquy is extended.

Mr. MERKLEY. I thank my colleague from New Mexico. I am going to be very brief, because in 2 minutes I am taking the chair so my colleague from Maryland can continue with his schedule.

Indeed, the silent secret filibuster that is occurring in the Senate today is deadly. What it means is that after there has been a vote of 41 who say we want more debate, there is no more debate because no one is required to debate. Instead, they don't want to appear in front of the American people and make their case, and that is outrageous. If you are voting for more debate and you are going to take up the time of this institution, time it could be using to address many of the challenges that face America, then you should have the courage of your convictions to make your case on this floor before your colleagues, before your constituents, before the American public, and engage in that dialogue. If you don't feel you want to spend the time and energy to do that, then you