change Senate precedent on how nominations are considered in the Senate and effectively change the procedures or application of the Senate's rules.

How many votes are required to appeal the ruling of the Chair in this instance?

The PRESIDENT pro tempore. A majority of those Senators voting, a quorum being present, is required.

Mr. MCCONNELL. So I am correct that overturning the ruling of the Chair requires a simple majority vote?

The PRESIDENT pro tempore. The Senator from Kentucky is correct.

The majority leader has appealed from the decision of the Chair.

The question is, Shall the decision of the Chair stand as the judgment of the Senate?

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

The PRESIDENT pro tempore. The yeas and nays are requested.

Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 48, nays 52, as follows:

[Rollcall Vote No. 242 Ex.]

YEAS—48

Alexander	Fischer	McConnell
Ayotte	Flake	Moran
Barrasso	Graham	Murkowski
Blunt	Grassley	Paul
Boozman	Hatch	Portman
Burr	Heller	Pryor
Chambliss	Hoeven	Risch
Coats	Inhofe	Roberts
Coburn	Isakson	Rubio
Cochran	Johanns	Scott
Collins	Johnson (WI)	Sessions
Corker	Kirk	Shelby
Cornyn	Lee	Thune
Crapo	Levin	Toomey
Cruz	Manchin	Vitter
Enzi	McCain	Wicker

NAYS—52

Baldwin	Hagan	Nelson
Baucus	Harkin	Reed
Begich	Heinrich	Reid
Bennet	Heitkamp	Rockefeller
Blumenthal	Hirono	Sanders
Booker	Johnson (SD)	Schatz
Boxer	Kaine	Schumer
Brown	King	Shaheen
Cantwell	Klobuchar	Stabenow
Cardin	Landrieu	Tester
Carper	Leahy	Udall (CO)
Casey	Markey	Udall (NM)
Coons	McCaskill	Warner
Donnelly	Menendez	Warren
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden
Franken	Murphy	
Gillibrand	Murray	

The PRESIDENT pro tempore. The decision of the Chair is not sustained.

The Republican leader.

APPEALING RULING OF THE CHAIR

Mr. MCCONNELL. Mr. President, I make a point of order that nominations are fully debatable under the rules of the Senate unless three-fifths of the Senators chosen and sworn have voted to bring debate to a close. Under the precedent just set by the Senate, cloture is invoked at a majority. Therefore, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDENT pro tempore. The Chair has not yet ruled.

Under the precedent set by the Senate today, November 21, 2013, the threshold for cloture on nominations, not including those to the Supreme Court of the United States, is now a majority. That is the ruling of the Chair.

Mr. MCCONNELL. I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDENT pro tempore. The Republican leader appeals the decision of the Chair.

The question is, Shall the decision of the Chair stand as the judgment of the Senate?

The yeas and nays have been requested.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 52, nays 48, as follows:

[Rollcall Vote No. 243 Ex.]

YEAS—52

Baldwin	Hagan	Nelson
Baucus	Harkin	Reed
Begich	Heinrich	Reid
Bennet	Heitkamp	Rockefeller
Blumenthal	Hirono	Sanders
Booker	Johnson (SD)	Schatz
Boxer	Kaine	Schumer
Brown	King	Shaheen
Cantwell	Klobuchar	Stabenow
Cardin	Landrieu	Tester
Carper	Leahy	Udall (CO)
Casey	Markey	Udall (NM)
Coons	McCaskill	Warner
Donnelly	Menendez	Warren
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden
Franken	Murphy	
Gillibrand	Murray	

NAYS—48

Alexander	Fischer	McConnell
Ayotte	Flake	Moran
Barrasso	Graham	Murkowski
Blunt	Grassley	Paul
Boozman	Hatch	Portman
Burr	Heller	Pryor
Chambliss	Hoeven	Risch
Coats	Inhofe	Roberts
Coburn	Isakson	Rubio
Cochran	Johanns	Scott
Collins	Johnson (WI)	Sessions
Corker	Kirk	Shelby
Cornyn	Lee	Thune
Crapo	Levin	Toomey
Cruz	Manchin	Vitter
Enzi	McCain	Wicker

The PRESIDENT pro tempore. The Senate sustains the decision of the Chair.

The majority leader.

Mr. REID. Mr. President, what is the pending question before the Senate?

CLOTURE MOTION

The PRESIDENT pro tempore. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Patricia Ann Millett, of Virginia, to be United States Circuit Judge for the District of Columbia.

Harry Reid, Patrick J. Leahy, Richard J. Durbin, John D. Rockefeller IV, Benjamin L. Cardin, Jon Tester, Sheldon Whitehouse, Mark R. Warner, Patty Murray, Mazie K. Hirono, Angus S. King, Jr., Barbara Boxer, Jeanne Shaheen, Robert Menendez, Bill Nelson, Debbie Stabenow, Richard Blumenthal.

The PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Patricia Ann Millett, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close, upon reconsideration?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CHAMBLISS (when his name was called). Present.

Mr. HATCH (when his name was called). Present.

The yeas and nays resulted—yeas 55, nays 43, as follows:

[Rollcall Vote No. 244 Ex.]

YEAS—55

Baldwin	Harkin	Nelson
Baucus	Heinrich	Pryor
Begich	Heitkamp	Reed
Bennet	Hirono	Reid
Blumenthal	Johnson (SD)	Rockefeller
Booker	Kaine	Sanders
Boxer	King	Schatz
Brown	Klobuchar	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Leahy	Stabenow
Carper	Levin	Tester
Casey	Manchin	Udall (CO)
Coons	Markey	Udall (NM)
Donnelly	McCaskill	Warner
Durbin	Menendez	Warren
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murphy	
Hagan	Murray	

NAYS—43

Alexander	Fischer	Murkowski
Ayotte	Flake	Paul
Barrasso	Graham	Portman
Blunt	Grassley	Risch
Boozman	Heller	Roberts
Burr	Hoeven	Rubio
Coats	Inhofe	Scott
Coburn	Isakson	Sessions
Cochran	Johanns	Shelby
Collins	Johnson (WI)	Thune
Corker	Kirk	Toomey
Cornyn	Lee	Vitter
Crapo	McCain	Wicker
Cruz	McConnell	
Enzi	Moran	

ANSWERED ''PRESENT''—2

Chambliss	Hatch

The PRESIDENT pro tempore. Upon reconsideration, the motion is agreed to.

EXECUTIVE SESSION

NOMINATION OF PATRICIA ANN MILLETT TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Resumed

The PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. Mr. President, I wish to take a few minutes first to congratulate our leader Senator REID for leading the Senate finally into the 21st century. This is the step that we have taken today. Thank you very much, Leader REID, for your courageous action and making sure that the Senate can now work and get our work done.

I have waited 18 years for this moment. In 1995, when we were in the minority, I proposed changing the rules on filibuster. I have been proposing this ever since.

What has happened is this war has escalated. It is war on both sides.

I said at the time, in 1995, that it was like an arms race. If we didn't do something about it, the Senate would reach a point where we wouldn't be able to function. At that time, I thought my words were a little apocalyptic, but as it turned out they weren't at all.

This is a bright day for the Senate and for our country, to finally be able to move ahead on nominations so that any President—not only this President, any President—can put together his executive branch under our Constitution. A President should have the people who he or she wants to form their executive branch.

Every Senator gets to pick his or her own staff. We don't have to have the House vote on it or anybody else. It is true of every Member of the House or Senate. It is true of the judiciary, the third branch of the government. They can hire their clerks or their staff without coming to us.

It is appropriate that any President can now form their executive branch with only 51 votes needed in the Senate, not a supermajority. That is a huge step in the right direction. We can confirm judges of all the courts less than the Supreme Court, circuit and district court judges, with 51 votes, without this supermajority that has been festering for so long.

I listened to the Republican leader during the runup to these votes, and he said that we were going to somehow break the rules to make a new rule. We did not break the rules. With the vote that we just had, the Senate broke no rules.

The rules provide for a 51-vote nondebatable motion to overturn the ruling of the Chair. We have done it many times in the past.

We did not break the rules. We simply used rules to make sure that the Senate could function and that we can get our nominees through.

I like what the writer Gail Collins said in her column this morning in the New York Times about these rule changes. She has had a lot of good columns, but she talked about how we were calling it the nuclear option. She proffered that it was probably called that because some think that changing the rules in the Senate is worse than a nuclear war, but it is not. It is time that we change these rules.

The Republican leader earlier said it was the Democrats who started this. It reminds me of a schoolyard fight between a couple of adolescents, and the teacher is trying to break it up. One kid says: He hit me first. The other says: No, he hit me first. Then the other kid says: No, he stepped on my toe first.

Who cares who started it? It is time to stop. Even if I accept the fact that Democrats started it—maybe they can prove that we did. It is possible way back when. It has escalated.

It turned from a punch here to a punch there to almost extreme fighting. It has reached the point where we can't function.

On nominations alone we had 168 filibusters since 1949. I picked that date because that is when all of this filibustering started, 168; 82 of those have been under this President. This is what I mean. It is worth it to talk about who started this. Fine. If they want to say the Democrats started it, fine, we started it. It has escalated beyond all bounds, as I said in 1995. It has turned into an arms race, so it is time to stop it. That is what we did this morning with this vote. We took a step in the right direction.

In 2008 Norman Ornstein, who is a congressional scholar, wrote about the broken Senate—our broken Senate—how we couldn't function. We can go back even beyond that. In 1985, my first year, Senator Thomas Eagleton, my neighbor to the south, said that the Senate is now in a state of incipient anarchy.

We had something such as 20 to 30 filibusters in the Congress before that. This has been escalating over a long period of time, and it was time to stop. That is what we did this morning.

This is a big step in the right direction, but now we need to take it another step further; that is, to change filibuster on legislation. We need to change it as it pertains to legislation.

For example, we recently had the spectacle of a bill that I reported out of our committee unanimously—Republicans and Democrats. It passed the floor of the House unanimously. It came to the Senate and one Senator stopped everything for 10 days. He stopped everything for 10 days. Guess what. It finally passed by unanimous consent.

Should one Senator be able to stop things in the Senate in this manner? It is time to move ahead and at the same time to protect the right of the minority, to offer amendments that are relevant and germane, debate, and vote on them. Not that they should win, but the minority should be able to offer, debate, and vote on relevant and germane amendments to legislation.

I proposed 18 years ago a formula that, quite frankly, was first proposed by Senator Dole many years before that. That was on a cloture vote to end a filibuster. The first time had to be 60 votes. Then we could wait 3 days to file a new motion with the requisite signatures and at that time we would need 57 votes. Then if we didn't have 57 votes, we could wait 3 more days, file the new motion on the same bill or amendment, and then it would require 54 votes. If we didn't have 54, we would wait 3 days, file a new motion, and then we needed 51 votes.

At some point the majority could act on legislation, but the minority would have the right to slow things down too; as Senator George Hoar said in 1897, give sober second thought to legislation in the Senate—sober second thought, not to stop it, not to block it, but to slow things down, yes; give it a second thought; maybe we shouldn't rush into things.

I understand that. Maybe things should be amended. The minority ought to have that right to offer those amendments—not just spurious amendments, but amendments that are relevant and germane to the legislation. Ultimately 51 should decide in the Senate what we proceed on and the outcome of the vote.

I hope the vote today leads the Senate to adopt such an approach in January 2015. When the new Senate comes in there will be a new Congress. I won't be here, but I hope at that point the Senate will then take the next step of cutting down on the blatant use of the filibuster on legislation.

Of the action taken today, this is what I predict. I predict the sky will not fall, the oceans will not dry up, a plague of locusts will not cover the Earth, and the vast majority of Americans will go on with their lives as before. But I do predict that our government will work better. A President will be able to form an executive branch, our judiciary will function better, and the Senate will be able to move qualified nominees through the Senate in a more responsible manner.

This is a good day for the Senate, a good day for our Nation. The Senate now enters the 21st century.

I congratulate Leader REID for bringing the Senate forward. It is a courageous action. I compliment all of my fellow Senators who upheld that vote, overruling the ruling of the Chair, so that from now on we only need 51 votes to close debate and move nominations and judges through the Senate.

I yield the floor.

The PRESIDING OFFICER (Mr. HEINRICH). The Senator from Michigan.

Mr. LEVIN. I ask unanimous consent that after the Senator from Iowa is recognized, I be recognized for up to 20 minutes.

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

The PRESIDING OFFICER. The Senator from Iowa.

NUCLEAR OPTION

Mr. GRASSLEY. Mr. President, we didn't have a chance to debate the change in rules, and we should have, so I am going to speak now on some things I think should have been said before we voted—not that it would have changed the outcome but because we ought to have known what we were

doing before we vote rather than afterward. So I will spend a few minutes discussing what the majority leader did on the so-called nuclear option.

Unfortunately, this wasn't a new threat. Over the last several years, every time the minority has chosen to exercise his rights under the Senate rules, the majority has threatened to change the rules. In fact, this is the third time in just the last year or so that the majority leader has said that if he didn't get his way on nominations, he would change the rules. Ironically, that is about as many judicial nominees as our side has stopped through a filibuster—three or so.

Prior to the recent attempt by the President to simultaneously add three judges who are not needed to the DC Circuit, Republicans had stopped a grand total of 2 of President Obama's judicial nominees—not 10, as the Democrats had by President Bush's fifth year in office; not 34, as one of my colleagues tried to suggest earlier this week; no, only 2 had been stopped. If we include the nominees for the DC Circuit, we have stopped a grand total of 5—again, not 10, as the Democrats did in 2005; not 34, as one of my colleagues tried to argue earlier this week but 5. During that same time we have confirmed 209 lower court Article III judges. That is a record of 209 judges approved to 5 who were not approved. So this threat isn't based on any crisis. There is no crisis.

I would note that today's Wall Street Journal editorial entitled ''DC Circuit Breakers: The White House wants to pack a court whose judges are underworked'' lays out the caseload pretty clearly.

I ask unanimous consent to have printed in the RECORD the editorial to which I just referred.

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

[From the Wall Street Journal, Nov. 21, 2013]

D.C. CIRCUIT BREAKERS

(By the Wall Street Journal Editorial Staff)

The White House wants to pack a court whose judges are underworked.

We remember when a ''judicial emergency'' was the Senate's way of calling attention to vacancies based on a court's caseload. Those were the good old days. Now Democrats are threatening to change Senate rules if Republicans don't acquiesce to their plan to confirm three new judges to the most underworked appellate circuit in the country.

That's the story behind the fight over the D.C. Circuit Court of Appeals, with the White House trying to pack the court that reviews much of its regulatory agenda. On Monday Senate Republicans blocked the third nominee to the D.C. appellate court in recent weeks, and Democrats with short memories of their judicial filibusters in the Bush years are claiming this is unprecedented. Majority Leader Harry Reid and other Democrats are threatening to resort to the so-called nuclear option, which would let the Senate confirm judicial nominees by a simple majority vote.

This is nothing but a political power play because the D.C. Circuit doesn't need the new judges. It currently has 11 authorized judgeships and eight active judges—four appointed by Democratic Presidents and four by Republicans. The court also has six senior judges who hear cases varying from 25% to 75% of an active judge's caseload. Together they carry the equivalent caseload of 3.25 active judges, according to numbers from Chief Judge Merrick Garland. That means the circuit has the equivalent of 11.25 full-time judges.

That's more than enough considering that the court's caseload is the lightest in the country. For the 12-months ending in September, the D.C. Circuit had 149 appeals filed per active judge. By comparison, the 11th Circuit had 778 appeals filed per active judge for the same period. If all three nominees to the D.C. Circuit were confirmed, the number of appeals per active judge would be 108, while a full slate on the 11th Circuit would be 583 appeals per judge. The national average of appeals per active judge is 383. The closest to the D.C. Circuit is the 10th Circuit, at 217 appeals.

Liberal Senator Pat Leahy claims that these comparisons don't matter because the D.C. Circuit handles complex rulemakings by federal agencies and sensitive national security cases. But the truth is that all the circuits handle complicated cases. And even many regulatory cases have been migrating to other circuits as some of the D.C. Circuit's stars have taken senior status.

According to the Administrative Office of the U.S. Courts, 42.9% of the D.C. Circuit's caseload is made up of administrative appeals of federal rules or regulations, the highest percentage of any circuit. In raw numbers, the D.C. Circuit is not carrying the heaviest load. That honor goes to the Second Circuit Court of Appeals.

Democrats are in a rush to confirm as many judges as possible because they know the clock is ticking on the Obama second term. Liberals have criticized the White House for its slow pace of nominations, but that isn't the fault of Republicans. Iowa Senator Chuck Grassley, the ranking Republican on Judiciary who has led the fight against more D.C. Circuit confirmations, has been entirely consistent. In the Bush years he opposed the nomination of a twelfth judge for the court on workload grounds.

GOP Senators watched for years as Senate Democrats blocked George W. Bush's nominees to the D.C. Circuit, including the eminently qualified Miguel Estrada and Peter Keisler. Republicans are right to say that the D.C. Circuit now has a full complement of judges following the unanimous confirmation of Obama nominee Sri Srinivasan in May.

Mr. Reid and his fellow Democrats are claiming that even if they establish a new standard of 51 votes to confirm appellate judges and executive-branch officials, they can keep the 60 vote standard for the Supreme Court. They're kidding themselves. If they change the rules to pack the D.C. Circuit, Democrats should understand they are also setting that standard for future Supreme Court nominees opposed to Roe v. Wade.

Mr. GRASSLEY. This is about a naked power grab and nothing more than a power grab. This is about the other side not getting everything they want, when they want it.

The other side claims they were pushed to this point because our side objected to the President's plan to fill the DC Circuit with judges the court does not need, but the other side tends to forget history. History is something we ought to learn from, so let's review how we got here.

After the President simultaneously nominated three nominees who are not needed for the DC Circuit—a blatant political power grab in its own right—what did the Republicans do? Well, we did something quite simple: We said we want to go by the rules the Democrats set in 2006. We said we would hold those Democrats to the same standard they established in 2006 when they blocked a nominee of President Bush's by the name of Peter Keisler.

Let's be clear about why the Democrats are outraged. Democrats are outraged because Republicans actually had the temerity to hold the other political party to a standard they established, and because we did, because we insisted we all play by the same rules, they came right back and said: Then we will change the rules. In effect, the other side has said: We don't want to be held to the standard we established in 2006. And not only that, but if you don't give us what we want, we are willing to forever change the Senate. And that is what happened today.

We hear a lot of ultimatums around here, but this ultimatum was not run-of-the-mill. It was very different. It was different because this threat was designed to hold the Senate hostage. It was different because it is designed to hold hostage all of the Senate's history and traditions and precedents. It was different because its effectiveness depends on the good will of Senators who don't want to see the Senate as we know it destroyed or function other than as the constitutional writers intended.

I would note that today's majority didn't always feel that way—the very way we have seen expressed today. Not too many years ago my colleagues on the other side described their fight to preserve the filibuster with great pride. For instance, in 2006 one of my colleagues on the other side said:

> The nuclear option was the most important issue I have worked on in my public life. Its rejection was my proudest moment as a minority leader. I emerged from the episode with a renewed appreciation for the majesty of Senate rules. As majority leader, I intend to run the Senate with respect for the rules and for the minority rights the rules protect.

In 2005 another of my Democratic colleagues had this to say, referring to when Republicans were in the majority:

> Today, Republicans are threatening to take away one of the few remaining checks on the power of the executive branch by their use of what has become known as the nuclear option. This assault on our traditions of checks and balances and on the protection of minority rights in the Senate and in our democracy should be abandoned.
>
> Eliminating the filibuster by nuclear option would destroy the Constitution's design of the Senate as an effective check on the executive.

So here we have two quotes from Democrats in the 2005–2006 timeframe very strongly supporting the precedent of the Senate in using the filibuster to protect minority rights. But that was when they were in the minority. Now

they are in the majority, and the tradition of the Senate doesn't mean much.

Here is another quote from the late Senator Byrd in 2005:

> And I detest this mention of a nuclear option, the constitutional option. There is nothing constitutional about it. Nothing.

But, of course, that was way back then—just 6, 7 years ago when today's majority was in the minority and there was a Republican in the White House. Today the shoe is on the other foot. Today the other side is willing to forever change the Senate because Republicans have the audacity to hold them—the majority party of today—to their own standard. Why? Why would the other side do this? There clearly isn't a crisis on the DC Circuit. The judges themselves say that if we confirm any more judges, there won't be enough work to go around. And it is not as if all of these nominees are mainstream consensus picks despite what the other side would have us believe, that they are somewhat mainstream.

Take Professor Pillard, for instance. She has written this about motherhood:

> Reproductive rights, including rights to contraception and abortion, play a central role in freeing women from historically routine conscription into maternity.

Is that mainstream?

She has also argued this about motherhood:

> Antiabortion laws and other restraints on reproductive freedom not only enforce women's incubation of unwanted pregnancies, but also prescribe a ''vision of the woman's role'' as mother and caretaker of children in a way that is at odds with equal protection.

Is that mainstream?

What about her views on religious freedom? She argued that the Supreme Court's case of Hosanna-Tabor Evangelical Lutheran Church, which challenged the so-called ''ministerial exception'' to employment discrimination, represented a ''substantial threat to the American rule of law.'' Now, get this. After she said that, the Supreme Court rejected her view 9 to 0, and the Court held that ''it is impermissible for the government to contradict a church's determination of who can act as its ministers.''

Do my colleagues really believe mainstream America thinks churches shouldn't be allowed to choose their own ministers?

I could go on and on, but I hope my colleagues get the picture.

The point is this: Voting to change the Senate rules is voting to remove one of the last meaningful checks on the President—any President—and voting to put these views on this important court.

So I ask again, why would the other side do this? It is nothing short of a complete and total power grab. It is the type of thing we have seen again and again out of this administration and their Senate allies, and you can sum it up this way: Do whatever it takes.

You can't get ObamaCare passed with Republican support? Do whatever it takes: Pass it at 7 a.m. on Christmas Eve with just Democratic votes.

You can't get all of your side to support ObamaCare? Do whatever it takes: Resort to things like the ''Cornhusker kickback.''

You lose your 60th vote on ObamaCare due to a special election? Do whatever it takes: Ram it through anyway using reconciliation.

The American people don't want to be taxed for not buying health care? Do whatever it takes: Tell the American people it isn't a tax and then argue in the court that it is a tax.

The American people want to keep their health care? Do whatever it takes: Promise them ''if you like your health care, you can keep it'' and then issue regulations making it impossible.

Your labor allies want out from under ObamaCare? Do whatever it takes: Consider issuing them—labor—a waiver from the reinsurance tax.

You can't find consensus nominees for the National Labor Relations Board? Do whatever it takes: Recess-appoint them when the Senate is still in session.

You can't convince Congress to adopt your gun control agenda? Do whatever it takes: Issue some Executive orders.

You can't convince moderate Democrats to support cap-and-trade fee increases? Well, do whatever it takes: Do the same thing through EPA regulation.

Frustrated that conservative groups' political speech is protected under the First Amendment? Do whatever it takes: Use the IRS to harass and intimidate those same conservative groups.

Frustrated when the court stands up for religious freedom and issues a check on the ObamaCare contraception mandate? Do whatever it takes: Stack the DC Circuit Court in your favor.

Frustrated when the court curbs your power on recess appointments? Do whatever it takes: Stack the DC Circuit with your favorite appointees—people who will rule in your favor.

Worried EPA's regulations on cap-and-trade fee increases might get challenged in the court? Do whatever it takes: Stack the DC Circuit in your favor.

Frustrated because Senate Republicans have the nerve to hold you to the same standard you established during the last administration? Do whatever it takes: Change the rules of the Senate. That is what we have witnessed today, nothing but an absolute power grab.

The majority in the Senate and their allies in the administration are willing to do whatever it takes to achieve their partisan agenda. They know there will be additional challenges to ObamaCare. They know that if they can stack the deck on the DC Circuit they can remove one of the last remaining checks on Presidential power.

But make no mistake, my friends on the other side will have to answer this question: Why did you choose this moment to break the rules to change the rules? Why now? Why, when we are witnessing the collapse of this massive effort to centrally plan one-sixth of this wonderful Nation's economy—why, when millions of Americans are losing their health care—why did you choose this moment to hand the keys to the kingdom over to the President, a President with less check on his authority?

Because the fact of the matter is this: any vote to break the rules to change the rules is a vote to ensure ObamaCare remains intact.

I will conclude by saying this. Changing the rules of the Senate in this way was a mistake. But if the last several years have taught us anything, it is that the majority won't stop making these demands. We can't always give in to these constant threats. Sooner or later you have to stand up and say: Enough is enough.

But if there is one thing which will always be true, it is this: Majorities are fickle. Majorities are fleeting. Here today, gone tomorrow. That is a lesson that, sadly, most of my colleagues on the other side of the aisle haven't learned for the simple reason that they have never served a single day in the minority.

So the majority has chosen to take us down this path. The silver lining is that there will come a day when roles are reversed. When that happens, our side will likely nominate and confirm lower court and Supreme Court nominees with 51 votes, regardless of whether the Democrats actually buy into this fanciful notion that they can demolish the filibuster on lower court nominees and still preserve it for Supreme Court nominees.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I ask unanimous consent that after my remarks, the Senator from Alabama be recognized.

The PRESIDING OFFICER. Without objection.

Mr. LEVIN. Mr. President, in the past, a few Senate majorities, frustrated by their inability to get certain bills and nominations to a vote, have threatened to ignore the rules and change them by fiat, and to change rules to a majority vote change. Rule XXII of the Senate requires two-thirds of the Senate to amend our rules. A new precedent has now been set, which is that a majority can change our rules. Because that step would change this Senate into a legislative body where the majority can, whenever it wishes, change the rules, it has been dubbed the nuclear option.

Arguments about the nuclear option are not new. Senator Arthur Vandenberg confronted the same question in 1949. Senator Vandenberg, who was a giant of the Senate and one of my predecessors from Michigan, said if the majority can change the rules at will, ''there are no rules except the transient, unregulated wishes of a majority

of whatever quorum is temporarily in control of the Senate.''

When Senator Vandenberg took that position, he was arguing against changing the rules by fiat, although he favored the rule change that was being considered.

Overruling the ruling of the Chair, as we have now done, by a simple majority is not a one-time action. If a Senate majority demonstrates it can make such a change once, there are no rules which bind a majority, and all future majorities will feel free to exercise the same power—not just on judges and executive appointments but on legislation.

We have avoided taking those nuclear steps in the past, although we have avoided them sometimes barely. I am glad we avoided the possible use of the nuclear option again earlier this year when our leaders agreed on a path allowing the Senate to proceed to a vote on the President's nominees for several unfilled vacancies in his administration. Today we are once again moving down a destructive path.

The issue is not whether to change the rules—I support changing the rules—to allow a President to get a vote on nominees to executive and most judicial positions. But this is not about the ends but the means. Pursuing the nuclear option in this manner removes an important check on majority overreach. As Senator Vandenberg said: If a Senate majority decides to pursue its aims unrestrained by the rules, we will have sacrificed a professed vital principle for the sake of momentary convenience.

Republicans have filibustered three eminently qualified nominees to the Circuit Court of Appeals for the District of Columbia. They make no pretense of argument that these nominees are unqualified. The mere nomination of qualified judges by this President, they say, qualifies as court packing. It is the latest attempt by Republicans, having lost two Presidential elections, to seek preventing the duly elected President from fulfilling his constitutional duties.

The thin veneer of substance laid over this partisan obstruction is the claim that the DC Circuit has too many judges. To be kind, this is a debatable proposition, one for which there is ample contrary evidence, and surely one that falls far short of the need to provoke a constitutional battle. Republicans know they cannot succeed in passing legislation to reduce the size of the court. So, presented with a statutory and constitutional reality they do not like, they have decided to ignore that reality and have decided they can obstruct the President's nominees for no substantive reason.

Let nobody mistake my meaning. The actions of Senate Republicans in these matters have been irresponsible. These actions put short-term partisan interest ahead of the good of the Nation and the future of this Senate as a unique institution. It is deeply dispiriting to see so many Republican colleagues who have in the past pledged to filibuster judicial nominees only in extraordinary circumstances engaged in such partisan gamesmanship. Whatever their motivations, the repercussions of their actions are clear. They are contributing to the destruction of an important check against majority overreach. To the frustration of those willing to break the rules to change the rules, those of us who are unwilling to do that have now seen it occur before our eyes when the Chair was overruled earlier today.

So why don't I join my Democratic colleagues in supporting the method by which they propose to change the rules? My opposition to the use of the nuclear option to change the rules of the Senate is not a defense of the current abuse of the rules. My opposition to the nuclear option is not new. When Republicans threatened in 2005 to use the nuclear option in a dispute over judicial nominees, I strongly opposed the plans, just as Senator Kennedy, Senator BIDEN, and Senator Byrd did, and just about every Senate Democrat did—including Democrats still in the Senate today.

Back then, Senator Kennedy called the Republican plan a ''preemptive nuclear strike,'' and said:

> Neither the Constitution, nor Senate rules, nor Senate precedents, nor American history, provide any justification for selectively nullifying the use of the filibuster. Equally important, neither the Constitution nor the Rules nor the precedents nor history provide any permissible means for a bare majority of the Senate to take that radical step without breaking or ignoring clear provisions of applicable Senate Rules and unquestioned precedents.

Here is what then-Senator BIDEN said during that 2005 fight:

> The nuclear option abandons America's sense of fair play. It's the one thing this country stands for. Not tilting the playing field on the side of those who control and own the field. I say to my friends on the Republican side, you may own the field right now but you won't own it forever. And I pray to God when the Democrats take back control, we don't make the same kind of naked power grab you are doing.

My position today is consistent with the position that I and every Senate Democrat took then—and that is just back in 2005—to preserve the rights of the Senate minority. I can't ignore that. Nor can I ignore the fact that Democrats have used the filibuster on many occasions to advance or protect policies we believe in.

When Republicans controlled the White House, the Senate, and the House of Representatives from 2003–2006, it was a Democratic minority in the Senate that blocked a series of bills that would have severely restricted the reproductive rights of women. It was a Democratic minority in the Senate that beat back efforts to limit Americans' right to seek justice in the courts when they are harmed by corporate or medical wrongdoing. It was a Democratic minority in the Senate that stopped the nominations of some to the Federal courts who we believed would not provide fair and unbiased judgment. Without the protections afforded the Senate minority, total repeal of the estate tax would have passed the Senate in 2006.

We don't have to go back to 2006 to find examples of Senate Democrats using the rules of the Senate to stop passage of what many of us deemed bad legislation. Just last year, these protections prevented adoption of an amendment which would have essentially prevented the EPA from protecting waters under the Clean Water Act. We stopped an amendment to allow loaded and concealed weapons on land managed by the Army Corps of Engineers. With minority votes, we stopped legislation that would have allowed some individuals who were deemed mentally incompetent access to firearms. That is just in the last year. Removing these minority protections risks that in the future, important civil and political rights might disappear because a majority agreed they should.

Let us not kid ourselves. The fact that we changed the rules today just to apply to judges and executive nominations does not mean the same precedent won't be used tomorrow or next year or the year after to provide for the end of a filibuster on legislation, on bills and amendments that are before us.

Just as I have implored my Democratic colleagues to consider the implications of a nuclear option which would establish the precedent that the majority can change the rules at will, it is just as urgent for my Republican colleagues to end the abuse of rules allowing extended debate that were intended to be invoked rarely.

Some of my Democratic colleagues may rightfully ask, if a Democratic majority cannot initially muster a supermajority to end filibusters or change the rules, then what can the majority do? The rules give us the path, and that is to make the filibusterers filibuster. Let the majority leader bring nominations before the Senate, and let the Senate majority force the filibusterers to come to the floor to filibuster. The current rules of the Senate allow the Presiding Officer to put the pending question to a vote when no Senator seeks recognition. Let us, as the Senate majority, dedicate a week, or a weekend, or even a night, to force the filibusterers to filibuster.

In 2010, in testimony before the rules committee on this subject, this is what Senator Byrd said:

> 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.

Then he said:

> Forceful confrontation to a threat to filibuster is undoubtedly the antidote to the malady.

We have not used that antidote to the malady which besets this body, allowing the mere threat of a filibuster to succeed without challenging that threat, without telling the filibusterers: Go ahead, filibuster. We have rules that protect us. When you pause and when there is no one else here, at 3 o'clock on the fourth day or the fifth day or the sixth day, the Chair can put the question. The American people will then see in a dramatic way the obstruction which has taken place in this body.

But before a Senate majority assumes a power that no Senate majority before us has assumed, to change the rules at the will of the majority, before we do something that cannot easily be undone—and we have now done it—before we discard the uniqueness of this great institution, let us use the current rules and precedents of the Senate to end abuse of the filibuster. Surely we owe that much to this great and unique institution.

There is a conversation, which was a formal conversation between the majority and Republican leaders just last January. Here is what the majority leader said:

In addition to the standing order [which is what we have adopted] 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 exercise 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.

He said:

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.

He, our majority leader, said:

This is consistent with the precedent of the Senate and with Riddick's Senate Procedure.

What this showed again is that if we in the majority have the willpower, as much willpower as has been shown by some obstructionists in this body—if we have an equal amount of will as they have shown, that the current rules, before this change today, can be used to force filibusterers to filibuster, to come to the floor and to talk, all we need is the willingness to use the rules, to take the weekend off, to take a week that we hoped for a recess, and use it to come back here; to take the recess itself, if necessary during the summer, for 1 month if necessary, to try to preserve what is so essential to this body, its uniqueness, which is that the majority cannot change the rules whenever it wants.

The House of Representatives can change the rules whenever it wants. It is called a rules committee. They can adopt and modify the rules at any time, and they do. This body has not done that. We have resisted. We have been tempted to do it. We have come close to doing it. But we have never done it—until today.

Do I want to amend the rules? Do I. I want to amend these rules with all my heart. I want to embody a principle that a President, regardless of party, should be able to get a vote on his or her nominees to executive positions at the district and circuit courts. I believe in that. I believe most Senators believe in that. We need to change the rule. But to change it in the way we changed it today means there are no rules except as the majority wants them. It is a very major shift in the very nature of this institution, if the majority can do whatever it wants by changing the rules whenever it wants with a method that has not been used before in this body to change the very rules of this body.

We should have avoided a nuclear option. We should have avoided violating our precedents. We should have avoided changing and creating a precedent which can be used in the same way on legislation. It may give comfort to some today: ''But this is only on judges, this is only on executive appointments.'' This precedent is equally available to a majority that wants to change the rules relative to the legislative process.

Those who have abused these rules, mainly on the other side of the aisle, whether they acknowledge it, are contributors to the loss of protections which we see today for the Senate minority. Given a tool of great power, requiring great responsibility, they have recklessly abused it. But now I am afraid it will not just be they who will pay the price.

In the short term, judges will be confirmed who should be confirmed. But when the precedent is set, the majority of this body can change the rules at will, which is what the majority did today. If it can be changed on judges or on other nominees, this precedent is going to be used, I fear, to change the rules in consideration of legislation. Down the road—we don't know how far down the road, we never know that in a democracy—but down the road the hard-won protections and benefits for our people's health and welfare will be lost.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, throughout our Senate history we have had Senators such as Senator LEVIN. Before he does depart, I thank him for his principled approach to this complex issue.

Just to share with all of our colleagues, he is completing his service in the Senate this year. He is not running for reelection. He certainly would have been reelected. This weekend I was at a national security conference at the Reagan Library. The first winners of an award for national security were former Secretary of Defense Gates, who served two Presidents, and Senator LEVIN was the other winner. I think it is a tribute to his commitment to this country.

We have disagreed on a lot of issues and no one should think he is not a strong and effective advocate for values around here. But I think all of us should listen to his remarks and his warning, a very simple warning. That warning is that if a majority can change the rules with a simple majority vote in order to defeat what heretofore was a right of a minority party in the Senate, there are no minority rights left. They simply exist at the will of the majority. This is a fundamental matter. It is an important matter.

We have had some close calls and a lot of intensity, but we have avoided this kind of action. I think it is fair to say without dispute that the significance of this rule change today dwarfs any other appeal of the ruling of the Chair that we have seen—maybe in the history of the Republic. This is a big event. It changes what goes on because we deal with power and the exercise of power.

This whole thing is simply Majority Leader REID—and he has a difficult job. I have tried to not make his life more difficult than it needs to be.

But he is not a dictator. He does not get to dictate how this Senate is operated. He does not have the right to come in and change the rules because he wants to fill three judgeship slots that are not needed. There is no way one can justify filling these court slots, based on simple need or by caseload per judge.

He is unhappy about that. Maybe he wants to change the mood of the country from ObamaCare and the overreach that was executed to pass that bill on December 24, to ram it through the Senate on a straight party-line vote. I suspect that is part of it. But this is not the way to do business.

The only reason those judges were blocked, the only reason they did not get a confirmation, was because we did not need them. This country is going broke. There are districts in America that need judges. The DC Circuit does not need more judges. It does not need the eight they have. Yes, they have 3 vacancies, but with the current 8 judges, their average caseload per judge was 149, and they have been continuing to drop. My circuit, the Eleventh Circuit, the Chair would be interested to know, has an average caseload per judge of 740. The next lowest caseload per circuit is twice 149. The average is well above that per circuit. The judges themselves say they do not need anymore judges. They take the whole summer off.

These judges would not have been rejected if we had needed them. But the President is so determined to try to leave a legacy of friends on that court

that he just shoved them anyway and demanded the Senate pass them, and Senator REID demanded that we confirm these judges. The judges say they do not need anymore judges on that court. They do not need them, whether they say they need them or not. I know how to look at the caseload. I am on the Judiciary Committee. I am on the courts subcommittee. I have chaired it and been ranking member of it for years. I know how to analyze weighted caseloads. There is no justification for adding or filling a single slot on that court and we should not be doing it.

I am also ranking Republican on the budget committee, and I know we cannot keep throwing away money for no good reason. The last thing we should do is ask the American people to fund $1 million-a-year judges. That is what each judge and the staff are estimated to cost—and there are three of them. It is akin to every year burning $1 million on The Mall. We do not have $1 million to throw away. But we do have judges, we do have circuits, we do have district courts around the country that are overloaded and we are going to add some judges to them. We ought to close these judge slots and move them to a place they are needed, as any commonsense person would do.

So it was not any animosity to any of the nominations and their character or decency that led to this rejection. It was because we warned against it.

Senator GRASSLEY and I serve on the judiciary committee. He previously chaired the court subcommittee, and Senator GRASSLEY blocked President Bush in filling one of those slots. Oh, they wanted to fill the slot. They thought they might leave a legacy judge who would be influential to them. That is what they suggested, but we refused. We were actually able to transfer one of those slots to the Ninth Circuit. That is how good business should be done around here. We are at a point where we don't need to fill that slot, and it should in no way cause the majority leader to feel as if his power was threatened or that his majority was threatened. We are changing the rules of the Senate so he can get three judges confirmed that we do not need. I will be prepared to debate that issue anywhere, anytime on the merits. Not one of those slots should be filled.

They have the lowest caseload per judge in America. Their cases are not so complex that it would slow down their work and demand more judges. That has been analyzed, and it is not true.

Senator REID asked for this job. That is what my wife says to me when I complain. She says: Don't blame me; you asked for the job. He asked to be the majority leader of the Senate, and it is not easy. There are a lot of Members and a lot of different ideas about what ought to be done.

Trent Lott called it herding cats. I suppose that is a pretty good description of it. One time he said it is like putting a bunch of frogs in a wheelbarrow. You put one in and two jump out. It is not easy to move the Senate. I understand that. Changing the rules, as Senator LEVIN said, by a simple majority vote and significantly altering the tradition of the Senate is dangerous.

Senator REID said we have been wasting time on the procedural hurdles thrown up in the Senate. He also said Congress is broken and the American people think that Congress is broken. They thought it was broken when they used legerdemain on December 24 before Scott Brown from Massachusetts could take office so they could pass a health care bill that the American people overwhelmingly opposed.

Maybe the reason the American people are frustrated with the Congress is that they passed a bill that the American people opposed without a single Republican vote in the House or the Senate. Maybe that is why the American people are not happy with us.

I will explain, colleagues, what is causing the greatest frustration in the Senate. It is a trend that began some years ago—not long after I came to the Senate 17 years ago—and it has accelerated. It has reached a pace with Majority Leader REID we have never, ever seen before, and it undermines the very integrity and tradition of the Senate. It has to stop. We have to recover the tradition of this body. We owe it to those who will be filling these seats in the years to come.

This is the problem: A maneuver called filling the tree was discovered. It is a parliamentary maneuver where the majority leader, who gets recognition first in the Senate, seeks recognition and then he fills the tree. That parliamentary maneuver basically blocks anyone else from getting an amendment. A Senator cannot introduce his or her amendment. So how do we have an amendment? You have to go hat in hand to Senator REID and say: Senator REID, I would like an amendment.

Well, I don't think so.

I don't like that amendment.

But I like it. I want to vote on it.

Sorry. We don't want to vote on it.

That is the way it has been going every year. The Defense bill commonly had 30 or more amendments of substance when it hit the floor—$500 billion. It was the biggest appropriation bill we had—$500 billion. Senator COBURN has an amendment directly related to the Department of Defense that would save some money.

Senator REID will not give him a vote on that.

People say: Why don't you do something, SESSIONS? Why don't you get an amendment passed? I cannot bring an amendment to the floor unless he agrees. He says it is because of delay. He says it is because it creates time difficulties. We have been on this bill for a week, and we have only had two votes. We have gone for days with no votes. It is not about time. Let me tell you what it is: The majority leader of the Senate is protecting his members from tough votes. He does not want them to have to cast votes on critical issues in this country. He is not concerned about time or delay. There is plenty of time.

We could have already cast 15 votes on this bill, and everybody would be satisfied. That is the way it was when Senator MCCONNELL was here. That is the way it has been. That is the way it had been when I came here. We had 60-something votes on a bankruptcy bill. It went on for 3 weeks.

This is causing tension and frustration. One of our new Members in the Senate when we were debating this very question some months ago said: They tell us we have to get Senator MCCONNELL's decision before they will let us introduce an amendment. I said: Wait a minute. Do you not understand that you are a duly elected Senator from the United States of America and you have to ask permission of the Republican leader before you can get a vote on an amendment? How did this happen?

This is a background issue that is undermining collegiality in this body. I am tired of asking the majority leader for permission to give me a vote in the Senate. It is not right.

Mr. ROBERTS. Would the Senator yield?

Mr. SESSIONS. Yes, I will yield for a question.

Mr. ROBERTS. I am assuming that his situation is very similar to the situation that I find myself in. About a year ago we brought the farm bill to the floor. I was the ranking member of the committee. We voted 73 times. We had over 300 amendments offered. The amendments came forth, and the first amendment had nothing to do with agriculture. Basically, we were able to get through it in 2½ days.

Fast-forward to this year's farm bill. I think there were 10 votes. Senator THUNE has been on the committee for a long time. We respect his voice, and we respect his amendments. He had about four amendments. Senator GRASSLEY has been on the committee a lot longer. He always has amendments on the farm bill. Senator JOHANNS is a former Secretary of Agriculture. He is an excellent Senator for Nebraska and a real voice for Agriculture. He had several amendments. I had two or three amendments that I would have liked to have had considered.

The reason I mention them is because we all agreed to hold off in committee as long as we could bring them to the floor. We wanted to expedite it because the big issue was time. They said: Well, we don't have time for a farm bill. Usually a farm bill takes 1 to 2 weeks. That is just not the case anymore. Last year we got through it in 2½ days.

This year we expected to have votes, but none of us got amendments. After 10 votes, bingo, it was cut off. The majority leader controlled the effort. This is like the Rules Committee in the House.

When I was in the House, we had a Roberts-Stenholm amendment.

Mr. SESSIONS. An amendment can't come up for a vote in the House unless it is approved by the Rules Committee.

Mr. ROBERTS. That is correct.

Mr. SESSIONS. That is the difference between the House and the Senate.

Mr. ROBERTS. Madam President, if I could respond to the distinguished Senator. We had a Roberts-Stenholm amendment at that point while the Republicans were in the minority. Charlie Stenholm was a Democrat. As we went in he whispered: You might want to make this the Stenholm-Roberts amendment. I figured that out pretty fast, and we got our amendment made in order.

As a younger member of the House at that particular time, I thought the Rules Committee was based on the merits of whether it was germane or pertinent, et cetera. It wasn't. It was just a complete rehash of what went on with the authorizing committee.

One of the reasons I decided to come to the Senate was that you can offer an amendment at any time on any subject, unless it was something involving national security or whatever. I understand that. What we have now is a one-man rules committee. I deeply resent that.

I feel sorry for the Senate, and I feel sorry for the Members who come here and are not able to have their amendments considered.

One of the first things I did as the ranking member of the Senate agriculture committee last year was to promise that amendments could be brought to the floor. A lot of people on our side never had the opportunity to offer an amendment before. I said: You will have that opportunity if I can get this thing done. And we did. We opened it and it was one of the few bills that went under regular order, and we got things done.

There is only one House. There is the House and there is the Senate—just like the House—and that is a shame.

I thank the distinguished Senator for his comments.

Mr. SESSIONS. I thank the Senator so very much. His insight is correct. I will wrap up and say that what happened today is very significant, and it is a sad day. It represents the greatest alteration of the rules without proper procedure that we have probably seen in the history of the Republic.

It erodes legitimate minority rights in a way that subjects every right a minority party has in the Senate and the right any individual Senator has in the Senate. It places that right at great risk. A majority can do that at any time. That was explained so eloquently by Senator ROBERTS a few moments ago. I was so impressed with his analysis.

We will wrestle through this and work at it. I know that Senator ALEXANDER has worked hard in every way possible to avoid this day. He has expressed great interest in it, and I look forward to hearing his comments at this time on where we are and what is going to happen to us.

I thank the Senator and yield the floor.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I thank the Senator from Alabama for his thoughtfulness and leadership.

As Senator Byrd used to say: The purpose of the Senate is to have a place where there can be an opportunity for unlimited discussion, unlimited debates and unlimited amendments. That is why we are here.

Senator Byrd used to say so eloquently that the Senate was a unique body because it provided the necessary fence against the abuses of the executive. That is what Senator Byrd said in his last speech to the Senate when he spoke before the rules committee. He said the Senate is the necessary fence against abuses of the executive—remembering how this country was founded in opposition to the king and the popular excesses. That was what the Senate was supposed to be. I am afraid that ended today.

This action by the Democratic majority is the most important and most dangerous restructuring of the rules of the Senate since Thomas Jefferson wrote the rules at the founding of our country. It creates the perpetual opportunity—as Alexis de Tocqueville described—that is most dangerous for our country. He said that when he came to our country to visit in the 1830s. The young Frenchman said: I see two great dangers for this new American democracy. One was Russia and the other was the tyranny of the majority.

The action that was taken today creates a perpetual opportunity for the tyranny of the majority because it permits a majority in this body to do whatever it wants to do anytime it wants to do it. This should be called ObamaCare 2 because it is another example of the use of raw partisan political power for the majority to do whatever it wants to do any time it wants to do it.

In this case what it wants to do is implement the President's radical regulatory agenda through the District of Columbia court. That's what this is. It is not about an abuse of the filibuster.

There is a big football weekend coming up in Tennessee. Vanderbilt University plays the University of Tennessee in Knoxville.

Let's imagine this: The Vanderbilt-Tennessee game, which is being played in Knoxville, home of the University of Tennessee, and Vanderbilt gets on the 1-yard line. The University of Tennessee says: Well, we are the home team, so we will just add 20 yards to the field or whatever it takes for us to win the game. Or the Boston Red Sox are playing at home. Let's say they are behind the Cardinals this year. They get to the ninth inning and they are behind and they say: Well, it is our home field. We will just add a few innings or whatever it takes so we can win the game. That is what the Democratic majority did today. They say: The rules don't allow us to do what we want to do, so we will just change the rules to do whatever it takes to get the result we want.

That is what they did with ObamaCare. We remember that. I was standing right here at the desk. It was snowing. It was the middle of the winter. Senators were coming in, in the middle of the night, and what happened? Among the things the American people like the least about ObamaCare is that it was crammed down the throat of the American people by the raw exercise of partisan political power with not one single Republican vote. That is not the way the civil rights bill was passed. That is not the way Social Security and other great bills were passed. They were passed by a bipartisan majority so we could gain the support of the American people.

Our Democratic majority must have liked that ObamaCare night. The American people aren't liking it so much because apparently nobody read the bill very closely. There are millions of Americans who have had their policies canceled. There are going to be millions more when employers start looking at the cost of ObamaCare.

This is ObamaCare 2; I say to my colleagues. This is another exercise of raw partisan political power for the Democratic majority to get the result it wants. There is only one cure for it, and that is an election. An election is coming up in about a year. The American people can speak. In the meantime, this has been the most dangerous, most important restructuring of the Senate since Thomas Jefferson wrote the rules.

It is, according to the Senator from Nevada, who is the majority leader—it is, according to his book in 2008, the end of the Senate. That is what he said this would be, and now he has done it. He has written the end of the Senate by his actions today.

The Senator from Michigan, Mr. LEVIN, said to all of us when we were discussing this earlier this year—he reminded us of the great Senator from Michigan, Arthur Vandenberg, who was the author of the idea of a bipartisan foreign policy. Senator Vandenberg said shortly after World War II that a U.S. Senate in which a majority can change the rules anytime the majority wants is a U.S. Senate without any rules. Let me say that again. A U.S. Senate in which the majority can change the rules anytime the majority wants is a U.S. Senate without any rules.

So this is not about the filibuster. This is another raw partisan political power grab so the Democratic majority can do whatever it wants to do whenever it wants to do it. It is ObamaCare II, and the American people will see it that way when they can take time away from the Web sites trying to fill

out their new insurance policies to be able to pay enough attention to it.

What is the excuse for this extraordinarily disturbing action today? They are the flimsiest of excuses, and I will take a few minutes to outline what those are.

The first allegation is that the Republican minority was using the filibuster to keep President Obama's appointees from gaining their seats. Well, let's look at the history from the Congressional Research Service. How many Supreme Court nominees have ever not been seated because of a failed cloture vote? That is a filibuster. The answer is zero in the history of the Senate—not just President Obama but the history of the Senate. Someone might point to the Abe Fortas case when President Johnson—I guess it was in the late 1960s—engineered a 45-to-43 cloture vote so, in Johnson's words, Abe Fortas could hold his head up, but, in fact, the filibuster has never been used to deny a Supreme Court Justice his or her seat. How many Cabinet Members of President Obama have been denied their seat by a filibuster? Zero. This is the Congressional Research Service.

The majority leader said: Well, what about Secretary Hagel, the distinguished Defense Secretary? He had to wait 34 days to be confirmed. Why shouldn't he wait 34 days to be confirmed? He was confirmed shortly after his name was reported. We had a perfectly adequate Secretary of Defense sitting in the office at the time—Secretary Panetta. I remember the Senator from Nevada standing over there and asking: What if we are attacked and Secretary Hagel is not there? Well, Secretary Panetta was there.

The number is zero.

Mr. INHOFE. Madam President, will the Senator yield?

Mr. ALEXANDER. Of course.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I ask unanimous consent that after the Senator concludes his remarks, we hear from the Senator from Arkansas Mr. PRYOR, and that I be recognized after Senator PRYOR for such time as I may consume.

The PRESIDING OFFICER. Is there objection?

Mr. ALEXANDER. Certainly. And if the Senator from Oklahoma needs to speak now, I will be glad to yield.

Mr. INHOFE. That is not necessary.

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

Mr. ALEXANDER. Madam President, my point is that the charge is that Republicans had been denying President Obama his nominations by filibuster. Not on the Supreme Court, not to his Cabinet, and no district judges, I say to my colleagues.

How many in the history of the country have ever been denied their seats by a failed cloture vote, including President Obama? The answer is zero.

That is very interesting. So what is the reason for this? Well, let's go on. Maybe it was some other nomination that caused such a problem that would justify this dangerous restructuring of the Senate rules.

Let's go to the sub-Cabinet category. These are all the executive appointments below the Cabinet level. How many of those have been denied? Under President Clinton, the Senate rejected two nominees of his by a cloture vote. Under George W. Bush, it was three. Under President Obama, it has been two. So in the history of the Senate, the cloture vote has been used to deny seven Presidential nominees their seat, including two for President Obama.

Let's go to the one area where there has been a little bit more; that is, the circuit judges. Remember, on the Supreme Court, never; district judges, never; Cabinet member, never; but circuit judges, yes. There have been 10 instances where Presidential nominees for the Federal circuit courts of appeals have been denied their seats because of a failed cloture vote—that is a filibuster—five Democrats, five Republicans.

How did this happen? If in all of these other areas it never happens, why did it happen here? Because, as the Republican leader explained this morning, Democrats got together in 2003—the year I came to the Senate—and said, for the first time in the history of the U.S. Senate, we are going to use the filibuster to deny President George W. Bush 10 nominations to the circuit court because they are too conservative, not because they are not qualified. One was Miguel Estrada, one of the most highly qualified nominees ever presented. One was Judge Pickering. One was Judge Pryor, who used to be a law clerk to Judge Wisdom, as I once was. I know the high respect Judge Wisdom had for him. The end result was that we had this Gang of 14, and the Democrats ended up only stopping five of President Bush's judges, but that was the first time in the history of the Senate. To date, including the judges we are discussing now, the three on the DC Circuit Court, the total is five. So that is it.

How can anyone say President Obama has not been treated fairly when, in fact, the answer is zero on the Supreme Court, zero on district judges, zero on Cabinet and two on sub-Cabinet, and the same on circuit courts that President Bush had?

I asked the Senate Historian if President Obama's second term Cabinet nominees had been moved through the Senate more swiftly or slower than those of his two predecessors, Bush and Clinton. The Senate Historian told me it was about the same. So on that question, that is a fake crisis.

The second allegation is that it takes too long for President Obama's nominees to come through the Senate. Well, we have something on our desks called the Executive Calendar. Every Senator has this. There are 44 Senators in their first term, and maybe some haven't had a chance to read it very carefully, but it has on it all of the names of everyone who could possibly be confirmed.

The way Senate procedure works is a nominee comes out of a committee to the Executive Calendar. Let me state the obvious: All of the committees are controlled by the Democrats. So if we want to report someone for the National Labor Relations Board, it has to be approved by a majority of senators on the committee on which I serve. Democrats have a majority of the seats on the Committee; so a nominee gets on this calendar by a majority of Democratic votes.

So how long have the people on the calendar been waiting? Well, 54 of them have been waiting only 3 weeks; in other words, they just got there. Most of them aren't controversial. Usually they are approved on a day such as this when we are wrapping up before we go home for a week or two, so half of them would probably be gone today. There are 16 who have been on the calendar for up to 9 weeks. That is a very short period of time in the U.S. Senate for people to have a chance to do their other business and get to know the nominees. There are eight who have been on the calendar more than 9 weeks. Of the eight, two are being held up by Democrats, and two more are Congressman WATT and Ms. Millett. That leaves four, and one of those is a newscaster who has been nominated to be a member of the board of the Morris K. Udall Foundation and who is being moved along with other people to that foundation board.

In other words, it is not true that there are people being held up for a long period of time because the only way a nominee can be confirmed in the U.S. Senate is if the majority takes someone from this Executive Calendar, moves their nomination—it doesn't have to go through any sort of other motion; he can do it on his own—and then we move to consider that person.

Well, one might say: But someone can hold each up one of those. Yes, we can, under the cloture procedure. But let's take an example. Let's say Senator REID, the distinguished majority leader, were to come, under the old rules, to the floor and say: I believe Republicans are holding up 10 of our lower-level nominees in an obstructionist way. So let's say he arrives on Monday and he files cloture. He moves to confirm all 10 of those. He takes them off this calendar, he moves them to be confirmed, and he files cloture on each of the 10 on Monday. Tuesday is what we call an intervening day. He can get the rest of them confirmed, by bankers' hours, by Friday if he wants to because after he has that intervening day, there could only be, because we changed the rules earlier this year, 8 hours of debate, and his side can yield back their 4 hours, and then we go to the next one and then the next one. So we have 40 or 45 hours, and we have them all.

The majority leader, if he wished to, could confirm all of these people very

easily unless 41 Republicans said no. But what we have already seen is that almost never happens. In the history of the country, it has happened twice to President Obama on his sub-Cabinet members, never on a Cabinet member; and never on district judges.

So the majority leader had plenty of opportunity to have everybody confirmed if he wanted to. This is why Senator Byrd, who was majority leader and minority leader, in his last speech to the Senate said: There is no need to change the rules—and I am paraphrasing. I was at the Rules Committee hearing when he spoke. He said: A majority leader can use the rules that we have—that is, until today—to do whatever he wants to get done.

Then there is the last charge about the District of Columbia Circuit. That was the other pretext for this. Somehow Republicans were doing something wrong by saying it is too soon to cut off debate on the President's three nominees for the District of Columbia Circuit.

Republicans were doing—to the letter—exactly what Democrats did in 2006 and 2007. They were saying that court is underworked, that other courts are overworked, and we ought to move judges from where they are needed least to where they are needed most before we put anymore judges on the court.

This is the letter sent on July 27, 2006, by all the Democrats on the Senate Judiciary Committee, including Senators LEAHY, SCHUMER, Feingold, Kohl, BIDEN, FEINSTEIN, Ted Kennedy. They said ''under no circumstances'' should President Bush's Republican nominee be considered, much less confirmed, by this committee before we address the very need for the judges on the committee.

All we in the Republican Party were saying is—Senator GRASSLEY has had his bill in since 2003; the Democrats said in 2006 we should not put anymore judges on the court until we look at where the judges are needed—we are saying: Consider Senator GRASSLEY's bill before you confirm the judges.

So that is the excuse—the flimsiest of excuses. The idea that President Obama is not being treated at least as well as previous Presidents with his nominees is just not true. The filibuster has not been used to deny him nominees, except in two cases for sub-Cabinet members; and in the case of circuit judges, no more than with President Bush.

The majority leader has not used the rules he had before him to easily confirm the people on the Executive Calendar. Those on the Executive Calendar for the most part have only been there for a few weeks. So why then did the majority feel the need to take this extraordinary action?

That takes us back to where we started. This is, very simply, another partisan political power grab to permit the majority to do whatever it wants to any time it wants to do it.

The American people—millions of them—are filling out their insurance forms. They are trying to make the Web site work. They are terrified by the fact that they may not have insurance by January 1. That is totally the result of a partisan political power grab in the middle of the night 3 years ago that put ObamaCare into place. This is another example of that. The only cure for that is a referendum next November.

I deeply regret the action the Democratic majority took today. It is the most dangerous and the most consequential change in the rules of the Senate since Thomas Jefferson wrote those rules at the founding of our country.

Madam President, I would refer my colleagues to the letter I had included in the RECORD yesterday, the letter from the Senate Democrats in 2006 arguing that the DC Circuit should have no more judges until we consider the proper number and also a 1-page list of the total number of sub-Cabinet members who have ever been denied their seat by a failed cloture vote—and that number is seventeen in the history of the Senate; two under Clinton, three under Bush, and two under President Obama—plus five Bush judges and five Obama judges.

Mr. ALEXANDER. I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Madam President, I want to echo at least some of the sentiment that my distinguished colleague from Tennessee just mentioned—that I am disappointed in the use of the nuclear option. I opposed that. I think it could do permanent damage to this institution and could have some very negative ramifications for our country and for the American people.

I do not want to be an alarmist about it, but I do have concerns. I am very disappointed that it got to this point, and I want to talk about that in a moment. But before I do, I would like to say, if you step back, the Senate was designed to be a place for debate. It is where Members—the way it was designed, the way the rules were structured, the size of it, the history of it—the Members can reach across the aisle and find solutions.

That is what this country needs right now. We need solutions. We need people who are willing to work together to get things done. Part of that is to allow the minority to speak, even if it is a minority of one. We need to protect that right, and we need to protect every Senator's right to debate and to amend legislation. I think no one here with a straight face would say there have not been abuses from time to time. We know that. There have been, and I have seen a lot since I have been here.

But also, if you step back and look at the Senate, it is the only place in our government where the American people can actually see law being made. With all due respect to our colleagues in the House, you do not see law being made there. They come out of their Rules Committee and it is all pretty much set up, and right now at least they kind of tend to vote party line, party line, party line—done. You do not see law being made at the White House. When they are doing things such as executive orders, all you know is you kind of get the press release or you see an announcement in the Rose Garden, and that is it. You do not see law even being made in the courts. A lot of law in this country is made by the courts. For example, across the street at the U.S. Supreme Court, what you have is they hear the arguments, and they all go back in chambers. You do not really know what they talk about, you do not really know how that is working, and then they come out with their decision—and in some cases decisions because a lot of times there is a dissent.

But the Senate is unique in that way. We are the only place in our government where you can actually see the law being made. It is also, in that same sense, the only place where the minority is guaranteed a voice. They sometimes get outvoted, but they are guaranteed at least to be heard. I think that is important.

So again, I share the disappointment of many of my colleagues today in how this happened.

The Senate rules I have worked with for 11 years now. They can be arcane and frustrating. But the way it is designed is it allows people to fight for their State's interests or their ideological beliefs, whatever it happens to be, and the sense is everybody is fighting for what is best for the country. We may disagree with what is best, and that is why we should have votes eventually on these matters. But it allows people to fight for what they think is right, best for their State, best for the country, best for the world—whatever the issue happens to be.

Since I have been here, what I have tried to do consistently is to fight to maintain the integrity of this institution. Since I have been here, there have been numerous times—and I have been part of bipartisan groups. Probably the most high profile one was the Gang of 14 back in 2005, where we worked out some judicial nominations. But nonetheless I was a part of that; just recently, the Levin-McCain group that helped to change the rules, as the Senator from Tennessee talked about.

What that is all about is working with Senators from both sides of the aisle to reach commonsense solutions—not just to protect the rights of the minority but also to improve the legislative process, to make sure this place works as it is designed. So certainly that is what I try to do every single day when I come here. I do understand that if you are going to get anything done in Washington, anything done in this Senate, you are going to have to work together to do it. It is like in the Book of Isaiah. It says: ''Come now, let us reason together.'' I think that is the

one verse in the whole Bible that sort of sums up the Senate: Come and let us reason together. The Senate should always be the place for that.

Let me make two last points on this nuclear option. The first is that I would encourage the American citizens to be very careful in looking at statistics. They are difficult to use. They can be very misleading because almost always these statistics lack context. I hear the talking heads. I hear folks on talk radio. I have even seen a few people right here in this Chamber use these extensively, and very often there is no context. Sometimes, for example—if you just look at cloture motions—you can actually have a filibuster without filing a cloture motion, and you can have a cloture motion without there actually being a filibuster. So, again, that will skew the numbers.

The bottom line is, there is plenty of blame to go around—plenty of blame. If one person says it is all the other side's fault, they are not being truthful. There is plenty of blame to go around. On this both parties are at fault. I will give you one example. It was not too long ago that I heard people come down here and say the DC Circuit's workload was such that they needed more judges. Well, guess what. Now I have heard those very same people say that the DC workload is so light they do not need any more judges. The shoe is on the other foot. Democrats back in the day said the DC Circuit had a light workload and did not need any more judges. Now Democrats are saying it does need more judges.

We need to stop the games and get back to work. I think there is one way to fix this, and that is by following the Golden Rule. I think if we take those words of Jesus literally and apply those to what we do here in the Senate—''Do unto others as you would have them do unto you''—and really mean that and really apply that—to do unto others as you would have them do unto you—I think all these problems would go away.

It is about respecting one another. It is about working with one another. It is about respecting elections in other States, and national elections. Do unto others as you would have them do unto you and all this would go away. Also, a little dose of forgive one another would also help.

APPROPRIATIONS

Madam President, let me also spend a couple minutes here thanking Chairwoman MIKULSKI. She has a tough job as chairwoman of the Appropriations Committee, and she is an example of someone who is determined to work together to get work done, trying to get the appropriations process back on track. No doubt it has been sidetracked this year and in recent years. This year we have seen what I would term an irresponsible feud, especially down on the House side, blowing up the farm bill, pushing for shutting down the government, trying to get us in a bad place on the debt ceiling.

I am not trying to do the blame game, but I know that Chairwoman MIKULSKI is fighting very hard to put an end to that. We need to get back to our No. 1 priority. That should be growing our economy and creating jobs. There are lots of ways we can do that, but one is through the appropriations process, by investing in infrastructure. We can make responsible, targeted investments in our future with the right kind of spending on infrastructure, whether it is roadways or airports or schools or centers for innovation—whatever it happens to be. There are lots of smart ways to do that.

The history of this country shows it is a winning strategy when we work together and make the right kind of investments in our future. Arkansas is a good example. We have a number of items we could talk about today where Federal spending has made a real difference in our State. One of those is called the Bayou Meto water project. It started back in 1923. It has been the subject of a lot of fights, and I have some scars to show that I have been part of some of those fights. But they are making great progress there. Not only is it good for thousands and thousands of farmers, but it is also great for drinking water and for flood control, and there are 55,000 acres of fish and wildlife habitat that are being protected through this project. So it is a win-win for everybody.

Arkansas airports would be another example. You may not think of Arkansas as an aviation State or an aviation powerhouse, but we have 29,000 jobs that are tied to commercial and general aviation. It is $2.5 billion in our economy. Again, that investment in infrastructure is what makes that possible.

We also have the National Center for Toxicological Research down near Pine Bluff, AR—cutting-edge research, lots of effort on nanotechnology.

We have a great technology park in Fayetteville. They are trying to build one in Little Rock. All of these—and the focus on STEM, et cetera—all of these help create jobs and grow our economy.

Congress needs to focus on that. I am not saying it is going to be easy, but we need to work together. We need to pass a budget. We need to move our appropriations bills through the process. And we just need to, bottom line, get back on track. The way to move our economy forward is by really putting the interests of our country first and not these partisan and sometimes petty disputes, ideological disputes. We need to think about what is best long term for the country. Again, I think the appropriations process is the way to do that.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

NATIONAL DEFENSE AUTHORIZATION ACT

Mr. INHOFE. Madam President, it is my understanding we may have a vote this afternoon. I have often said the most important bill we pass every year—and we have passed every year for the last 52 years—is the National Defense Authorization Act.

I would like to say this about the process we have gone through. I do not recall ever having worked with a chairman when I have been in the minority who has been so easy to work with as Chairman LEVIN has been on this Defense bill. It is one we all understand we have to do. It has to be a reality. A lot of what we do around here we can wait a month and do it. But on this we cannot, because right now we have men and women in the field. We have their paychecks. We have things that have to happen to keep this going as it has in the last few years.

Maintenance and modernization are right now. If we were not able to pass this now, our research and development would no longer be able to be there in time to take care of the immediate needs we have.

I am very upset about what has happened to our defense system. Under this administration, we have lost $487 billion in Defense—coming out of the hide of Defense. In addition, we are now looking at the sequester. I will only say this, perhaps for the last time: Why should our defense system, which is only accountable for 18 percent of the budget, be responsible for 50 percent of the cuts? It is because this administration is determined that is what is going to happen to the military.

So now we have people such as General Odierno, Commanding General of the U.S. Army, who said:

> . . . lowest readiness levels I have seen within our Army since I have been serving for the last 37 years. Only two brigades are ready for combat.

Admiral Greenert, the CNO of the Navy:

> . . . because of the fiscal limitations and the situation we are in, we do not have another strike group trained and ready to respond on short notice in case of contingency. We are tapped out.

Admiral Winnefeld is the No. 2 guy in the military system. He is the Vice Chairman of the Joint Chiefs of Staff. He said:

> There could be, for the first time in my career, instances where we may be asked to respond to a crisis and we have to say we cannot.

I have given a lot of talks on the floor about how serious things are right now.

Put the readiness chart up there.

I would only comment to this. A lot of people think there is an easier answer for this, and that we can, through efficiencies in the Pentagon, take care of these problems. A lot of work needs to be done. My junior Senator certainly is going to be concentrating on that, on the efficiencies. However, if all