was almost always because of a substantive issue with the nominee's record. We know what has happened since 2009—Republicans have required cloture to consider even those nominees later confirmed unanimously.

This obstruction was not merely a product of extreme partisanship in a Presidential election year—it has been a constant and across the board practice since President Obama took office. At the end of each calendar year, Senate Republicans have deliberately refused to vote on several judicial nominees just to take up more time the following year. At the end of 2009 Republicans denied 10 nominations pending on the Executive Calendar a vote. The following year, it took 9 months for the Senate to take action on 8 of them. At the end of 2010 and 2011, Senate Republicans left 19 nominations on the Senate Executive Calendar, taking up nearly half the following year for the Senate to confirm them. Last year they blocked 11 judicial nominees from votes, and refused to expedite consideration of others who already had hearings.

The effects of this obstruction have been clear. When the Senate adjourned last year, Senate Republicans had blocked more than 40 of President Obama's circuit and district nominees from being confirmed in his first term. That obstruction has led to a damagingly high level of judicial vacancies persisting for over four years.

This year, Senate Republicans reached a new depth of pure partisanship. They have decided to shut down the confirmation process altogether for an entire court—the U.S. Court of Appeals for the DC Circuit, even though there are three vacancies on that court. Senate Republicans attempt to justify their opposition to filling any of the three vacancies on the DC Circuit with an argument that the court's caseload does not warrant the appointments.

We all know that this ploy is a transparent attempt to prevent a Democratic President from appointing judges to this important court. We all know what has happened here in the DC Circuit. In 2003, the Senate unanimously confirmed John Roberts by voice vote as the 9th judge on the DC Circuit at a time when the caseload was lower than it is today. He was confirmed unanimously. No Democrat, no Republican opposed him. Not a single Senate Republican raised any concerns about whether the caseload warranted his confirmation and during the Bush administration they voted to confirm four judges to the DC Circuit—giving the court a total of 11 judges in active service.

Today there are only eight judges on the court; yet, when Patricia Millett was nominated to that exact same seat by President Obama, a woman with just as strong qualifications as John Roberts—they both had great qualifications—she was filibustered. Some say we should not call that a double standard. Well, I am not sure what else one might call it. We also should not be comparing the DC Circuit's caseload with that of other circuits, as Republicans have recently done. The DC Circuit is often understood to be the second most important court in the land because of the complex administrative law cases that it handles. The court reviews complicated decisions and rulemakings of many Federal agencies, and in recent years has handled some of the most important terrorism and enemy combatant and detention cases since the attacks of September 11, 2001. Comparing the DC Circuit's caseload to other circuits is a false comparison, and those who are attempting to make this comparison are not being fully forthcoming with the American public. Years ago, one of the senior most Republican Senators on the Judiciary Committee said this:

> [C]omparing workloads in the DC Circuit to that of other circuits is, to a large extent, a pointless exercise. There is little dispute that the DC Circuit's docket is, by far, the most complex and time consuming in the Nation.

Now, however, that same Senator has engaged in the precise pointless exercise he once railed against.

This is an unprecedented level of obstruction. I have seen substantive arguments mounted against judicial nominees, but I have never seen a full blockade against every single nominee to a particular court, regardless of the individual's qualifications. Republicans attempted to take this type of hardline stance with certain executive positions last year and earlier this year, when they refused to allow a vote for any nominee to the Consumer Financial Protection Bureau and the National Labor Relations Board. Rather than representing substantive opposition to these individual nominees, this obstruction was a partisan attempt to sabotage and eviscerate these agencies which protect consumers and American workers. I have heard some call this tactic ''nullification.'' It is as if the Republicans have decided that the President did not actually win the election in 2008, and was not re-elected in 2012.

Senate Republicans backed off this radical and unprecedented hardline stance on executive nominees earlier this year, but they have shown no signs of doing the same with the DC Circuit. And it is not for lack of qualified nominees. This year, Senate Republicans filibustered the nominations of three exceptionally qualified women: Caitlin Halligan, Patricia Millett and Nina Pillard. Earlier this week Republicans filibustered another stellar nominee to this court, Judge Robert Wilkins.

I am a lawyer. I have tried cases in Federal courts. I have argued cases in Federal courts of appeal. I always went into those courts knowing I could look at that Federal judge and say: It doesn't make any difference whether I am a Democrat or a Republican, whether I represent the plaintiff or the defendant; this is an impartial court.

If we play political games with our Federal judiciary, how long are the American people going to trust the impartiality of our Federal courts? At what point do these games start making people think maybe this is not an independent judiciary? If that day comes, the United States will have given up one of its greatest strengths.

Let's go back to voting on judges based on their merit—and not on whether they were nominated by a Democratic President or a Republican President. Let's stop holding President Obama to a different standard than any President before him—certainly no President since I have been in the Senate, and I began with President Gerald Ford.

This obstruction is not just bad for the Senate, it is also a disaster for our Nation's overburdened courts. Persistent vacancies force fewer judges to take on growing caseloads, and make it harder for Americans to have access to justice. While they have delayed and obstructed, the number of judicial vacancies has remained historically high and it has become more difficult for our courts to provide speedy, quality justice for the American people. In short, as a result of Republican obstruction of nominees, the Senate has failed to do its job for the courts and for the American people, and failed to live up to its constitutional responsibilities. That is why the Senate today was faced with what to do to overcome this abuse and what action to take to restore this body's ability to fulfill its constitutional duties and do its work for the American people.

HONORING PRESIDENT JOHN F. KENNEDY

Seeing the distinguished Presiding Officer who is not only a New Englander, but in this case from Massachusetts, let me just speak personally for a moment on a very, very sad day.

Tomorrow will be November 22. And ever since I was a law student, November 22 has always brought a feeling of dread to me. Tomorrow will be 50 years since President Kennedy was murdered.

My wife Marcelle and I were living in Washington at that time. She was a young nurse, a registered nurse, working at the VA hospital on Wisconsin Avenue, a site that is now occupied by the Russian Embassy. She was helping to put this equally impoverished law student through Georgetown Law School. We had been there in this basement apartment, first during the Cuban missile crisis. And like everybody, we held our breath in this city, wondering if this new, young President, John F. Kennedy, could get us through this crisis without plunging the world into nuclear war. I was excited—we both were—to be in the same city.

My family has always been Democratic. Back in Vermont, the joke was: ''That's the street where the Democrats live.'' There were so few of them

in Vermont. But with an Irish-Catholic father and an Italian-Catholic mother, we had seen John Kennedy win—and in my State, amid something that doesn't exist anymore—an anti-Catholic attitude.

President Kennedy stood up to those people, some in the Joint Chiefs, who said they had so much more experience and we ought to go ahead and we had nuclear superiority over the then-Soviet Union; let's attack them, let's have a preemptive strike. And, Madam President, anybody who studies history knows what would have happened: Half the world would have been destroyed. Through patience and diplomacy, we got out of the situation.

And so we watched a young President go step by step, not always accomplishing everything he wanted, but always inspiring young people. I remember standing on Pennsylvania Avenue and seeing an open car go by with him. He had greeted an emperor, and their procession drove down Pennsylvania Avenue with people cheering. This was only months before he died. I was closer to him than I am to the distinguished Presiding Officer.

I remember, as an honor student, our class was invited to the White House with other students. Standing there with other students, I remember being struck by how red his hair was and how young he was. He talked with all of us.

Then I remember—as though it were yesterday, 50 years ago tomorrow—I was standing in the library of Georgetown University Law School. One of my classmates, who was not a fan of President Kennedy, came in and said: The President has been shot. I told him there was nothing funny about saying something like that. Then I saw the shocked look on his face and realized he was telling the truth.

We didn't have a car and we used to take buses to school from where we lived in the Glover Park area. I knew that Marcelle had been working all night and was probably home after getting off of her shift in the wee hours of the morning, and was home sleeping. I went running out, grabbed a cab to go home to tell her what happened.

I think I got the only cab in Washington, DC, that did not have a radio. The cab driver didn't know what was going on. I just said: Let's go. We drove on K Street. A number of the stockbrokers were there. I remembered past times when I went by that exact spot and saw ticker tapes projected on the wall with the numbers going by, with the stock market's activities. They were blank, even though the stock market should have been open at that time. It was stopped.

I saw a relative of Mrs. Kennedy's going to work—being chauffeured in a Rolls-Royce. As one can imagine, as a young law student on an un-air-conditioned bus, I looked at him with envy. I saw him running out frantically trying to grab a cab. It was very obvious something was wrong.

I got home, banged on the door and woke up Marcelle. I turned on the TV set and told her he had been shot.

She said: Who?

I said: The President.

We saw Walter Cronkite—which is something we keep seeing over and over, and have for 50 years—announcing the President was shot, and was dead.

We prayed for him, his family, for our Nation. Phones were just seizing up in Washington, but we talked with our family back in Vermont.

We knew they were going to leave the White House to bring the President's body, so we decided to go watch the funeral procession. We waited on the curb a few yards from the route on Pennsylvania Avenue. We were expecting our first child—he was born in January following this—but we thought, even so, we should go down, and we took the bus down and we stood across from the National Gallery of Art, what's now the west wing of the National Gallery of Art. There were several lanes of rows of people along the street—and it was so quiet, Madam President—so quiet—that even though the roads were blocked, the street lights were going, as they changed from red to green to yellow—we could hear the ''click'' five lanes from the road. We could hear the click of the street lights changing; it was that quiet.

Then we heard the drums. We heard the cortege leaving the White House. This was back before we had cell phones and everything else you could follow. Everybody on the street turned toward the other end of Pennsylvania Avenue, even though we could not yet see them. But we could hear them, it was that quiet.

And then cars came by the cortege: A riderless horse, a very skittish horse. You could hear its horseshoes clicking back and forth, as it would pull back and forth against the reigns, held by the man leading it, the boots turned backwards in the empty stirrups.

I saw Robert Kennedy go by in a car. In fact I took a photograph of him—with his head bowed, his chin on his hand.

It was so sad. It all went by. As the casket passed by, people saluted, held their hands over their hearts, and cried. Again, Madam President, it's like it was yesterday.

We watched the funeral from home. Mrs. Kennedy had decided that all of the world leaders who had come would march together from the White House to St. Matthew's where the President's funeral would be held.

I remember there had been a discussion of the protocol for having Presidents, Prime Ministers, and Emperors present. Mrs. Kennedy made the brilliant decision to assign the countries alphabetically in English. Haile Selassie, of Ethiopia, resplendent in his uniform, with braids and everything else, walked next to Charles de Gaulle, who, like myself, is well over six-feet tall, with a very plain uniform without decorations. Nobody thought anything unusual about it. It was all so respectful. Because there were so many heads of state, virtually every police officer in the city was downtown in that area. Yet, there wasn't a crime reported in DC at that time. Everybody was glued to their TV set.

The funeral scenes included young John Kennedy Jr., saluting his father's coffin as it went by. We watched the burial at Arlington Cemetery—we lived only a couple miles from there—and we saw the first jets—the fighter jets—flying over. We rushed outside just in time to see what we all know as ''missing man formation,'' when the jets are in formation, and one peels off. We saw that, and then we saw Air Force One fly over, just having dipped its wing in tribute. It was a very large plane at that time—blue, white, and silver—the same plane that brought the President's body back a few days before, from Dallas. It was coming out of its salute.

Throughout that time, everywhere we went we saw a silent and stunned city—both those who supported President Kennedy and those who had not. Everybody knew what a blow this was to our country. In fact, I did not again see that kind of shock and silence in Washington, DC until I walked from my office on 9/11, here on Capitol Hill, and saw the same thing after that attack on us.

For something like this, most people set aside their political backgrounds.

I remember so many of us stood here on that March day when President Reagan was shot. We all joined hands, Democrats and Republicans, and prayed for his safety and for the country. It is awful to have to have a situation like that, a situation such as that, to bring people together, but we should think about the country first and foremost in these things.

We look at those in succession to the Presidency; we worry about what might happen to the President. No one ever wants anything to happen to any President, Republican or Democrat. We don't want these things to happen to our country.

I was one of those young people inspired by John Kennedy and by Robert Kennedy—who invited me to join the Department of Justice as a young law student, though I was homesick and wanted to go back to Vermont, and I am glad I did.

These were people who inspired young people. They inspired us because we saw political life and elective office not as something for cynical gain or something to promote yourself or something where you could do bumper-sticker sloganeering. I don't care whether you were on the left or the right. They inspired others to make life better for everybody else, to make the country better and stronger, and to leave a better country for the next generation.

I think that was the promise of John Kennedy. I am glad that many in both

parties decided to follow that same promise. I just wish more would.

Madam President, I thank my colleagues for letting me have all this time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Madam President, I thank the distinguished Senator from Vermont for his remembrance of those days that were so special to him and also for really commemorating them so they will be special to all of us. I thank him for his comments.

RULES CHANGE

Madam President, I am going to speak as the ranking member of the Senate rules committee, and I am going to speak in regard to the rules changes that have occurred today.

Under the rules of this body, it takes 67 votes to end debate on a rules change. As a continuing body, our rules carry on from one Congress to the next—or at least they used to—and can only be changed pursuant to these rules. Our rules have always ensured a voice for the minority in this body. Unlike the House, where I served, where a simple majority has the power to impose a rule change at any time, in the Senate the minority has always been protected. Here, the rules protect the minority and cannot be changed without their consent—unless, of course, the majority decides it wants to break the rules to change the rules. I am saddened that is what happened today.

The Washington Post reported the other day that President Obama's approval rating has hit a record low; his disapproval rating has hit a record high—the worst of his Presidency. This is obviously the result of the disastrous rollout of ObamaCare which has caused Americans to question both the President's trustworthiness and his basic competence.

In light of these developments, one would think my colleagues on the other side of the aisle might be reconsidering the wisdom of some of their past decisions. One would hope it would occur to them that maybe it was a mistake to pass the health care reform bill on a straight party-line vote. I am one of the few who voted no in the HELP Committee, no in the Finance Committee, and no on the Senate floor on that Christmas Eve night.

One might expect them to have some doubts about the competence of this administration, as most Americans clearly do on this particular issue especially and on a lot of other regulations; that it would dawn on them that maybe now might be the right time to reassert congressional authority to rein in and redirect the administration—the executive, if you will—and use the power of the Senate to move the administration in a different direction. I am sorry that has not happened. Instead, in the face of the obvious failures of this President and his plummeting approval ratings, the majority has decided it would be a really good idea to give him more power. That is right, the majority thinks our biggest problem is that the President can't do whatever he wants to do and we should change our rules to allow him to do that. That is incredible.

The majority has permanently undermined this body, robbed it of a vital tool to check the untrammeled authority of this or any other President, so this sinking ship of an administration can make whatever appointments it wants. What a tragedy.

In Kansas, when you walk old ghost towns you will see buildings where nothing remains but the facade. Literally the entire building is gone and all that is left is the facade. To prevent that facade from collapsing, you may see beams propping it up.

In recent weeks this administration has been exposed as a facade. It still looks nice at first glance—the slick campaign-style appearances go on as usual—but when you look behind it, you see there is nothing there. It cannot perform the most basic tasks. It cannot even fulfill the responsibilities it has assigned to itself. It is collapsing. So now we, the Senate, are going to prop it up. The U.S. Senate, the world's greatest deliberative body, has been reduced to being a prop. We have reduced ourselves to rubberstamps, forfeiting our historical and constitutional authority to subject Presidential appointments to advice and consent so this administration can do whatever it wants. Again, what a tragedy. Never has so much been given for so little.

We have permanently undermined this body—for what? So this President can appoint a few more judges and stack the DC Circuit Court that oversees the constitutionality of Federal regulations? Yes, ObamaCare regulations, IRS regulations, EPA regulations—all of the regulations that come like a waterfall over basically every economic sector we have. This is unbelievable. What happened today will surely lead to complete control of this institution by the majority. I hope not, but that is what has happened in the past, more especially in the House.

Do not listen to those who would seek to minimize the importance of what has been done. The claim that what they have done is limited—applying only to executive nominations—misses the point. The change itself is less important than the manner in which it was imposed. Once you assume the power to write new rules with a simple majority vote, to ignore the existing rules that require a supermajority to achieve such a change, you have put us on a path that will surely lead to total control of this body by the majority.

Before today, there was only one House of Congress where the majority has total control. Now there are two. We have become the House. By its action today, the majority has ensured that for many years to come, Members will not have any rights beyond those which the majority is willing to grant.

When he was in the minority, our current majority leader recognized this. In his book ''The Good Fight,'' Senator REID wrote about the battle over the nuclear option back in 2005. This is what he wrote:

> Once you opened that Pandora's box, it was just a matter of time before a Senate leader who couldn't get his way on something moved to eliminate the filibuster for regular business as well. And that, simply put, would be the end of the United States Senate.

I repeat, ''the end of the United States Senate.''

Senator REID further wrote:

> . . . there will come a time when we will all be gone, and the institutions that we now serve will be run by men and women not yet living, and those institutions will either function well because we've taken care of them, or they will be in disarray and someone else's problem to solve.

He described the nuclear option this way then:

> In a fit of partisan furry, they were trying to blow up the Senate. Senate rules can only be changed by a two-thirds vote of the Senate, or 67 Senators. The Republicans were going to do it illegally with a simple majority, or 51 . . . future generations be damned.

If only today the majority leader had recalled his own words. Instead, by his own hand, he has brought on the end of the Senate as we know it. Instead of taking care of this institution, he will leave it in disarray—future generations be damned.

Our former Parliamentarian Bob Dove and Richard Arenberg, a professor and onetime aide to former majority leader George Mitchell, wrote a book on this subject called ''Defending the Filibuster,'' and this is what they said:

> If a 51-vote majority is empowered to rewrite the Senate's rules, the day will come, as it did in the House of Representatives, when a majority will construct rules that give it near absolute control over amendments and debate. And there is no going back from that. No majority in the House of Representatives has or ever will voluntarily relinquish that power in order to give the minority a greater voice in crafting legislation.

Do not be fooled by those who would try to minimize the impact of what happened today. Again, the rule change itself is less important than the manner in which it was imposed. Now that the majority has decided it can set the rules, there is no limit to what it or any future majority might do in the future. There are no constraints. The majority claims these changes are necessary to make the Senate function. If it decides further changes are needed, it will make them. The minority will have no voice, no say, no power. That has never been the case in the Senate—never. Until now.

It saddens me that we have come to this point. It saddens me that the Members on the other side of the aisle who should know better have taken this course. We have done permanent damage to this institution and set a precedent that will surely allow future majorities to further restrict the rights of the minority. That is not a threat; it is just a fact. We have weakened this

body permanently, undermined it, for the sake of an incompetent administration. What a tragedy.

This is a sad, sad day. When the future generations we have damned by today's actions look back and wonder ''Why are things in such disarray? When did it go wrong? When did the demise of the Senate begin?'' the answer will be today, November 21, 2013.

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

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

Mr. COCHRAN. Madam President, as the majority contemplate changing the rules of the Senate to expedite the confirmation of several executive branch nominees, I hope that serious consideration was given to the adverse effects this change could have.

We should resist embarking on a path that would circumvent the rights of the minority to exercise its advice and consent responsibilities provided in the Constitution.

The consequences of the action by the majority should not be minimized. Former Senator Ted Kennedy, in 2003, testified before the Rules Committee that by allowing a simple majority to end debate on nominees, ''the Senate would put itself on a course to destroy the very essence of our constitutional role.''

Such a departure from precedent would dilute the minority rights that differentiate the Senate from the other body. It also opens the door to applying this same rule to debate on judicial nominations, as well as the legislative process.

Mr. MCCAIN. Madam President, I wish to echo what my colleague from Michigan Senator LEVIN said on the floor earlier today. He quoted the late Senator Arthur Vandenburg of Michigan who said, in 1949, that if the majority can change the rules at will ''then there are no rules except the transient unregulated wishes of a majority of whatever quorum is temporarily in control of the Senate.''

Senator Vandenburg's words from 1949 have proven to be prophetic.

Additionally, when he was a Member of the Senate in 2005, President Obama said ''What [the American people] don't expect is for one party—be it Republican or Democrat—to change the rules in the middle of the game.'' That is exactly what his party did today—and they did so with the President's full support.

The American people will not be deceived—the Majority Leader's exercise of the ''nuclear option'' today is merely an attempt to divert their attention from Obamacare's failure to launch and the President's failure to keep his word to the American people on whether they can keep health care plans they already have. Republicans will, however, come together to maintain the American people's focus on these issues and on solving problems they are confronted with everyday—on health care reform, economic growth, runaway deficit-spending, and an unsustainable national debt that threatens future generations. Unfortunately, in his desperation to divert everyone's attention from Obamacare, the majority leader abused his position to decimate the integrity of the institution he is supposed to serve and continues to plunge this institution into a hopeless abyss of distrust and partisanship. These are circumstances that can be remedied by nothing less than a change in the majority in the Senate and its leadership. I remain dedicated towards achieving that outcome.

It is unfortunate we are in this position today. Numerous times over the years, the Senate has come to a standstill over nominees—whether they were judicial or executive branch. That gridlock inevitably leads to threats from the majority to use the ''nuclear option''—to change the rules of the Senate to strip the minority party of their right to filibuster certain nominees. I opposed using the nuclear option back when my party had the majority, and I oppose it today.

I think the Majority Leader made a huge mistake today.

Senator Vandenberg:

. . . I continue to believe that the rules of the Senate are as important to equity and order in the Senate as is the Constitution to the life of the Republic, and that those rules should never be changed except by the Senate itself, in the direct fashion prescribed by the rules themselves.

Senator Vandenberg continued:

I have heard it erroneously argued in the cloakrooms that since the Senate rules themselves authorize a change in the rules through due legislative process by a majority vote, it is within the spirit of the rules when we reach the same net result by a majority vote of the Senate upholding a parliamentary ruling of the Vice President which, in effect, changes the rules. This would appear to be some sort of doctrine of amendment by proxy. It is argued that the Senate itself makes the change in both instances by majority vote; and it is asked, what is the difference? Of course, this is really an argument that the end justifies the means.

Senator Vandenberg continued:

We fit the rules to the occasion, instead of fitting the occasion to the rules. Therefore, in the final analysis, under such circumstances, there are no rules except the transient, unregulated wishes of a majority of whatever quorum is temporarily in control of the Senate. That, Mr. President, is not my idea of the greatest deliberative body in the world. . . . No matter how important [the pending issue's] immediate incidence may seem to many today, the integrity of the Senate's rules is our paramount concern, today, tomorrow, and so long as this great institution lives.

He concluded, with that ''one consideration'':

What do the present Senate rules mean; and for the sake of law and order, shall they be protected in that meaning until changed by the Senate itself in the fashion required by the rules?

. . . [T]he rules of the Senate as they exist at any given time and as they are clinched by precedents should not be changed substantively by the interpretive action of the Senate's Presiding Officer, even with the transient sanction of an equally transient Senate majority. The rules can be safely changed only by the direct and conscious action of the Senate itself, acting in the fashion prescribed by the rules. Otherwise, no rule in the Senate is worth the paper it is written on, and this so-called ''greatest deliberative body in the world'' is at the mercy of every change in parliamentary authority.

According to CRS, proposals to limit Senate debate are as old as the Senate itself. Over the 224-year history of the body, numerous procedures have been proposed to allow the Senate to end discussion and act. The most important debate-limiting procedure enacted was the adoption in 1917 of the ''cloture rule,'' codified in paragraph 2 of Senate Rule XXII. Under the current version of this rule, a process for ending debate on a pending measure or matter may be set in motion by a supermajority vote of the Senate.

At times, Senators of both political parties have debated the merits of the Senate's tradition of free and unlimited debate. These debates have occurred at different times and under different sets of circumstances as Senators attempted, for example, to prevent filibusters of civil rights measures, pass consumer protection legislation, or secure the confirmation of judicial or executive branch nominations.

Although many attempts have been made to amend paragraph 2 of Rule XXII, only six amendments have been adopted since the cloture rule was enacted in 1917: those undertaken in 1949, 1959, 1975, 1976, 1979, and 1986. Each of these changes was made within the framework of the existing or ''entrenched'' rules of the Senate, including Rule XXII.

In 1949, the cloture rule was amended to apply to all ''matters,'' as well as measures, a change that expanded its reach to nominations, most motions to proceed to consider measures, and other motions. A decade later, in 1959, its reach was further expanded to include debate on motions to proceed to consider changes in the Senate rules themselves. The threshold for invoking cloture was lowered in 1975 from two-thirds present and voting to three-fifths of the full Senate except on proposals to amend Senate rules. In a change made in 1976, amendments filed by Senators after cloture was invoked were no longer required to be read aloud in the chamber if they were available at least 24 hours in advance.

In 1979, Senators added an overall ''consideration cap'' to Rule XXII to prevent so-called post-cloture filibusters, which occurred when Senators continued dilatory parliamentary tactics even after cloture had been invoked. In 1986, this ''consideration cap'' was reduced from 100 hours to 30 hours.

At various times I have been a part of bipartisan groups of Senators who were able to come together and negotiate agreements to end the gridlock surrounding nominees, avert the nuclear option, and allow the Senate to move forward with our work on behalf of the American people. My work in these groups—often referred to as ''gangs''—has won me both praise and condemnation, and has often put me at odds with some in my own party.

In 2005 for instance, I joined 13 of my colleagues in an agreement that allowed for votes on three of President Bush's judicial nominees who were

being filibustered by the Democrats—who were in the minority at that time. Part of that agreement addressed future nominees. It stated:

''Signatories will exercise their responsibilities under the Advice and Consent Clause of the United States Constitution in good faith. Nominees should only be filibustered under extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.''

In January of this year I began working with like-minded members of both parties to diffuse legislative gridlock and to meet the goals of making it easier for the majority to bring legislation to the floor while also making it easier for a Member of the minority to offer amendments to that legislation. Having a robust amendment process, especially on legislation of major consequence, is how the Senate has traditionally operated. It is something that has been sorely lacking for the last several years. And it is something that, when it has occurred, has invariably led to legislative achievement.

And again in July of this year the Senate faced gridlock over the President's nominees to the National Labor Relations Board—NLRB. I joined with Members on both sides to come up with a reasonable compromise which allowed for votes of the President's nominees.

My colleagues in the majority are mistaken if they assume that these agreements have meant that we, the minority party, have surrendered our right to filibuster nominees in certain circumstances. The exact opposite is true. These agreements were negotiated precisely to protect the rights of the minority to filibuster nominations in good faith where the minority finds that doing so is warranted under the circumstances.

I am disappointed my colleagues on the other side have taken this step today. I would argue that our side, led by Senator MCCONNELL, has been very accommodating in helping to secure cloture on numerous nominees. The fact that we have exercised our rights in several instances should not deter from that fact, and is certainly not deserving of this retaliatory action.

I have worked to end the stalemates over nominees, not for praise or publicity, but to retain the rights of the minority, and to help return the Senate to the early practices of our government and to reduce the rancor and distrust that unfortunately accompanies the advice and consent process in the Senate. I fear that today's action by the majority will result in even more discord in this body.

Mr. HATCH. Madam President, today we face a real crisis in the confirmation process, a crisis concocted by the majority to distract attention from the Obamacare disaster and, in the process, consolidate more power than any majority has had in more than 200 years. This crisis was created by a majority that wants to win at all cost, for whom the political ends justify any means whatsoever. The two parts of this crisis are what the majority is doing and how they are doing it.

What the majority is doing is terminating the minority's ability to filibuster judicial nominees. If anyone thought that judicial filibusters were so easy that the minority has been doing it indiscriminately, they would be wrong. It is harder to filibuster judges today than at any time since the turn of the 19th century. And the truth is that Democrats are now terminating a practice that they created and that they have used, by orders of magnitude, far more than Republicans.

In February 2001, just after President George W. Bush took office, Democrats vowed to use ''any means necessary'' to defeat his judicial nominees. That is one promise Democrats kept. They pioneered using the filibuster to defeat majority-supported judicial nominees in 2003. In fact, 73 percent of all votes for judicial filibusters in American history have been cast by Democrats.

By this same point under President Bush, the Senate had taken 26 cloture votes on judicial nominees, more than twice as many as have occurred under President Obama. Under President Bush, 20 of those cloture votes failed, nearly three times as many as under President Obama. Democrats set a record for multiple filibusters against the same nominee that still stands today. They filibustered the nomination of Miguel Estrada, the first Hispanic nominee to the U.S. Court of Appeals for the DC Circuit, seven times.

Individual Democratic Senators took full advantage of the judicial filibuster that they now are terminating. The majority leader, the majority whip, and the Judiciary Committee chairman together voted 82 times to filibuster Republican judicial nominees. In contrast, the minority leader, minority whip, and Judiciary Committee ranking member have together voted only 29 times to filibuster Democratic judicial nominees. For those same Democratic Senators to now take away from others the very tactic that they invented and used so liberally is beyond hypocritical.

The other part of this crisis is how the majority is terminating the judicial filibuster. The title ''nuclear option'' has been given to two methods by which a simple majority can change how the Senate does business. The first method has never been tried and can occur, if at all, only at the beginning of a new Congress. Because this method would actually change the Senate's written rules, it would be a public process involving a resolution and examination by the Rules Committee. Republicans considered using this method at the beginning of the 110th Congress but did not do so.

The majority today is instead using the second method, which requires only a ruling from whoever is presiding over the Senate. It is a pre-scripted parliamentary hit-and-run, over in a flash and leaving Senate tradition and practice behind like so much confirmation roadkill. This would be the wrong way to address even a real confirmation crisis, let alone the fake one created by the majority today.

The majority, it seems, just does not like the way our system of government is designed to work. I have been in the majority and the minority several times each, more than enough to experience that the rules, practices, and traditions of this body can annoy the majority and empower the minority. That is how this body is designed to work as part of the legislative branch. But the majority today wants to have it all. They are denying to others the very same tools that they used so aggressively before.

This year, the Senate has confirmed more than twice as many judges than at the start of President Bush's second term. We have confirmed nine appeals court judges so far this year, a confirmation rate exceeded only a handful of times in the 37 years I have served in this body. President Obama has already appointed one-quarter of the entire Federal judiciary.

But that is not enough for this majority. In order to clear the way for winning every confirmation vote every time, Democrats set up a confrontation over nominees to the DC Circuit. They knew that the DC Circuit did not need more than the eight active judges it now has. How did they know? Because the very same standards they used in 2006 to oppose Republican nominees to that court told them so.

In 2006, Democrats opposed more DC Circuit nominees because written decisions per active judge had declined by 17 percent. Since 2006, written decisions per active judge have declined by an even greater 27 percent. In 2006, Democrats opposed more DC Circuit appointments because total appeals had declined by 10 percent. Since 2006, total appeals have declined by an even greater 18 percent. The DC Circuit's caseload not only continues to decline, but is declining faster than before.

In 2006, Democrats opposed more DC Circuit appointments because there were 20 judicial emergency vacancies and there were nominees for only 60 percent of them. Since 2006, judicial emergency vacancies have nearly doubled and the percentage of those vacancies with nominees has declined to less than 50 percent.

Judiciary Committee Democrats put those standards in writing in 2006. None of them, including the four who still serve on the Judiciary Committee today, have either said they were wrong in 2006 or explained why different standard should be used today. They have not done so because this about-face, this double-standard, is a deliberate ploy to create an unnecessary and fake confirmation confrontation.

I have to hand it to my Democratic colleagues because reality television cannot hold a candle to this saga.

Democrats first abandoned the arguments they used against Republican nominees to the DC Circuit in order to create a fake confrontation. Then they ''solve'' this confrontation by terminating judicial filibusters that they once used against Republican nominees.

The filibuster has been an important—some would say a defining—feature of how this body operates for more than 200 years. It has always annoyed the majority because it empowers the minority. Both parties have used it, both parties have criticized it. But no majority has done what Democrats have done today. They have fundamentally altered this body, they have in the most disingenuous way done long term institutional damage for short term political gain. This majority wants everything to go their way, and will do anything to make that happen.

The majority created this fake confirmation crisis for two reasons. First, they want to stack the DC Circuit with judges who will approve actions by the executive branch agencies that President Obama needs to push his political agenda. Second, they want to distract attention from the Obamacare disaster. I think this heavy-handed move will have the opposite effect on both counts. Just as both parties have used the filibuster to stop certain judicial nominees, both parties will use the absence of the filibuster to appoint certain judicial nominees. And now that the majority has crossed this parliamentary Rubicon, we can indeed focus again on what Obamacare is doing to American families. This is a sad day for the Senate, for the judiciary, and for the American people who want to see their elected representatives act on integrity and principle rather than use gimmicks and power plays.

Mr. UDALL of New Mexico. Madam President, today the Senate took an unusual step to change our rules with a simple majority vote. I say unusual step, and not unprecedented, because it was something the Senate has done on many occasions in the past. Like those previous changes, the action we took was not intended to destroy the uniqueness of the Senate but instead was meant to restore the regular order of the body.

I believe, as I have stated many times since coming to the Senate, that the best way to amend the rules is by having an open debate at the beginning of each new Congress and holding a majority vote to adopt the rules for that Congress. I, along with Senators HARKIN and MERKLEY, tried to do that at the beginning of this Congress and the last. Ultimately we were unsuccessful in achieving the real reforms we wanted, including a talking filibuster. But there was some hope that the debate highlighted some of the most egregious abuses of the rules and led to an agreement that both sides would strive to restore the respect and comity that is often lacking in today's Senate. Unfortunately, that agreement rapidly deteriorated and the partisan rancor and political brinksmanship quickly returned.

As expected, many of my Republican colleagues called today's action by the majority a power grab and ''tyranny of the majority.'' They decried the lack of respect for minority rights. I do believe that we must respect the minority in the Senate, but that respect must go both ways. When the minority uses their rights to offer germane amendments, or to extend legitimate debate, we should always respect such efforts. But that is not what we have seen. Instead, the minority often uses its rights to score political points and obstruct almost all Senate action. Instead of offering amendments to improve legislation, we see amendments that have the sole purpose of becoming talking points in next year's election. Instead of allowing up or down votes on qualified nominees, we see complete obstruction to key vacancies. It is hard to argue that the majority is not respecting the traditions of the Senate when the minority is using this body purely for political gain.

During the debate over rules reform we had in January, many of my colleagues argued that the only way to change the Senate Rules was with a two-thirds supermajority. As we saw today, that simply is not true. Some call what occurred the ''Constitutional Option,'' while others call it the ''Nuclear Option.'' I think the best name for it might be the ''Majority Option.'' As I studied this issue in great depth, one thing became very clear. Senator Robert Byrd may have said it best. During a debate on the floor in 1975, Senator Byrd said, ''at any time that 51 Members of the Senate are determined to change the rule . . . and if the leadership of the Senate joins them . . . that rule will be changed.'' That is what happened today.

We keep hearing that any use of this option to change the rules is an abuse of power by the majority. However, a 2005 Republican Policy Committee memo provides some excellent points to rebut this argument.

Let me read part of the 2005 Republican memo:

''This constitutional option is well grounded in the U.S. Constitution and in Senate history. The Senate has always had, and repeatedly has exercised, the constitutional power to change the Senate's procedures through a majority vote. Majority Leader Robert C. Byrd used the constitutional option in 1977, 1979, 1980, and 1987 to establish precedents changing Senate procedures during the middle of a Congress. And the Senate several times has changed its Standing Rules after the constitutional option had been threatened, beginning with the adoption of the first cloture rule in 1917. Simply put, the constitutional option itself is a longstanding feature of Senate practice.

The Senate, therefore, has long accepted the legitimacy of the constitutional option. Through precedent, the option has been exercised and Senate procedures have been changed. At other times it has been merely threatened, and Senators negotiated textual rules changes through the regular order. But regardless of the outcome, the constitutional option has played an ongoing and important role.''

The memo goes on address some ''Common Misunderstandings of the Constitutional Option.''

One misunderstanding addressed, which we heard today is that, ''The essential character of the Senate will be destroyed if the constitutional option is exercised.''

The memo rebuts this by stating that ''When Majority Leader Byrd repeatedly exercised the constitutional option to correct abuses of Senate rules and precedents, those illustrative exercises of the option did little to upset the basic character of the Senate. Indeed, many observers argue that the Senate minority is stronger today in a body that still allows for extensive debate, full consideration, and careful deliberation of all matters with which it is presented.''

Changing the rules with a simple majority is not about exercising power, but is instead about restoring balance. There is a fine line between respecting minority rights and yielding to minority rule. When we cross that line, as I believe we have many times in recent years, the majority is within its rights to restore the balance. This is not tyranny by the majority, but merely holding the minority accountable if it crosses that line and makes the Senate a dysfunctional body. I would expect the same if my party was in the minority and we were abusing the rules.

Many of my colleagues argue that the Senate's supermajority requirements are what make it unique from the House of Representatives, as well as any other legislative body in the world. I disagree. If you talk to the veteran Senators, many of them will tell you that the need for 60 votes to pass anything or confirm nominees is a recent phenomenon. Senator HARKIN discussed this in great detail during our debate in January and I highly recommend reading his statement.

I think this gets at the heart of the problem. We are a unique legislative body, but not because of our rule book. We have recently devolved into a body that our Founders never intended. Rather than one based on mutual respect that moves by consent and allows majority votes on almost all matters, we have become a supermajoritarian institution that often does not move at all.

With all of the economic issues we face, our country cannot afford a broken Senate. Both sides need to take a step back and understand that what we do on the Senate floor is not about winning or keeping the majority next November, but about helping the country today.

Today's vote to change the rules is a victory for all Americans who want to end obstruction and return to a government that works for them. Americans sent us here to get things done, but in recent years, the minority has filibustered again and again—not to slow action out of substantive concerns, but

for political gain. Any President—Democrat or Republican—should be able to make their necessary appointments.

This change finally returns the Senate to the majority rule standard that is required by the Constitution when it comes to executive branch and judicial nominees. With this change, if those nominees are qualified, they get an upor-down vote in the Senate. If a majority is opposed, they can reject a nominee. But a minority should not be able to delay them indefinitely. That is how our democracy is intended to work.

New Mexicans—all Americans—are tired of the gridlock in Washington. The recent filibuster of three DC Circuit nominees over the last 4 weeks was not the beginning of this obstruction. It was the final straw in a long history of blocking the President's nominees. Doing nothing was no longer an option. It was time to rein in the unprecedented abuse of the filibuster, and I am relieved the Senate took action today.

LEGISLATIVE SESSION

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014—Continued

Mr. REID. Madam President, I ask unanimous consent that notwithstanding cloture having been invoked on the Millett nomination, the Senate resume legislative session and consideration of S. 1197; that the time until 4 p.m. be equally divided and controlled between Chairman LEVIN and Ranking Member INHOFE or their designees, with the chairman controlling the last half of the time; that at 4 p.m., the Senate proceed to vote on the motion to invoke cloture on S. 1197, the Department of Defense authorization bill; that if cloture is invoked, notwithstanding cloture having been invoked, the Senate proceed to vote on S. Con. Res. 28; further, if cloture is invoked on S. 1197, the second-degree amendment filing deadline be 5 p.m. today; finally, that if cloture is not invoked on S. 1197, the Senate proceed to vote on adoption of S. Con. Res. 28.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1197) to authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Reid (for Levin/Inhofe) Amendment No. 2123, to increase to $5,000,000,000 the ceiling on the general transfer authority of the Department of Defense.

Reid (for Levin/Inhofe) Amendment No. 2124 (to Amendment No. 2123), of a perfecting nature.

Reid motion to recommit the bill to the Committee on Armed Services, with instructions, Reid Amendment No. 2305, to change the enactment date.

Reid Amendment No. 2306 (to (the instructions) Amendment No. 2305), of a perfecting nature.

Reid Amendment No. 2307 (to Amendment No. 2306), of a perfecting nature.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, let me first repeat, as I have many times, I have never worked with a manager more closely than the chairman of the Armed Services Committee Senator LEVIN. We worked very hard through a lot of issues. On the few where we disagreed with each other, we have handled it in a very civil way. We both want a bill and we will have one.

The problem we have on the Republican side is we have not had a chance to have amendments. I don't have the charts in here, but earlier this morning I had charts here to show historically every time this comes up, we have a number of amendments that the minority has—whether the minority happens to be the Democrats or Republicans. All we want to do is to consider these amendments.

Yesterday I said I don't think we will be able to do it, but I am going to attempt to come today—or yesterday, I said tomorrow—with 25 amendments that all of the Republicans have said they would not object to and we would say these are the ones we would like to have considered. Of those, assuming the Democrats had 25 also, the most we would have up for consideration would be maybe 20, probably less than that, because historically that is the way it is.

I have given the majority the 25 amendments we would like to have considered, and I made the statement yesterday—and I want to repeat it today—that now that we have agreed on a list, if we can have these amendments considered on the floor, then I would be a very strong supporter of this bill.

However, after going through the work of coming down to these amendments—and that is not an easy thing to do—if we are rejected and we are not going to be able to have consideration of these 25 amendments, I would vote in opposition to cloture to go to the bill.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, we will soon vote on whether to invoke cloture on S. 1197, the National Defense Authorization Act for Fiscal Year 2014. This bill was reported out of the Armed Services Committee with a strong bipartisan vote of 23 to 3. We have enacted a National Defense Authorization Act every year for more than 50 years, and it is critically important that we do so again this year.

We spent all day yesterday debating two amendments addressing sexual assault in the military, but we have not been allowed to vote on them. There was opposition on the other side to voting even on those two amendments which have now been fully debated. We were told that Senators wouldn't let us vote on the sexual assault amendments because they were afraid those would be the only votes. We offered to lock in additional amendments, six for Democrats, six for Republicans. That got an objection. Staff had built up a cleared amendment package of 39 additional amendments on a bipartisan basis, about half for each side, that were all agreed to on the merits. Again, we got thwarted.

So over and over, we had objections to considering amendments, based on the accusation that we were not considering enough amendments. But how on earth does blocking the consideration of amendments that we can all agree on advance the cause of considering amendments?

I am going to continue to work with my friend from Oklahoma—and we are good friends and we work together well. He is right. I am going to continue to work toward an agreement that will enable us to proceed with additional amendments on this bill.

This would not be the first time this kind of a problem has happened on a Defense authorization bill. In 2008, one Senator objected to cleared amendment packages and to bringing up amendments. As a result, we were able to have only two rollcall votes and adopted only 9 amendments—all of which were agreed to before the objection was raised. Then, as now, the objection did not result in more amendments being adopted but, rather, in almost no amendments being adopted at all. In 2008, we invoked cloture and proceeded with the bill with virtually no Senate amendments—a result which was less than ideal, but at least it enabled us to enact a National Defense Authorization Act that year.

We must pass a national defense authorization bill. If we fail to do so, we will be letting down our men and women in uniform and failing to perform one of Congress' most basic duties—providing for the national defense.

As is the case every year, if we fail to enact this bill, our troops will not get the full amount of compensation to which they are entitled. If we fail to act, the Department's authority to pay out combat pay, hardship duty pay, special pay for nuclear-qualified servicemembers, enlistment and reenlistment bonuses, incentive pay for critical specialties, assignment incentive pay, and accession and retention bonuses for critical specialties will expire on December 31.

After that date, we will have troops in combat who will not get combat pay. We will lose some of our most highly skilled men and women with specialties that we vitally need. Not only will we be shortchanging our soldiers, sailors, airmen, and marines, but we will be denying our military services critical authorities they need to recruit and retain high-quality servicemembers, and to achieve their force-