Mr. President, I reserve the remainder of the leader time.

Mr. HEFLIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alabama is recognized.

Mr. HEFLIN. I thank the Chair.

(The remarks of Mr. HEFLIN pertaining to the introduction of Senate Joint Resolution 13 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

THE DEATH OF DR. ARCHIE H. CARMICHAEL

Mr. HEFLIN. Mr. President, I rise for a point of personal privilege to lament the death yesterday of Dr. Archie H. Carmichael III, of Tuscumbia, Sheffield, and Muscle Shoals, AL. He was a very distinguished physician. He was an internist. Dr. Carmichael graduated from Vanderbilt Medical School and practiced for many years in the Shoals area of Alabama. His grandfather, Archie H. Carmichael, served as a Member of Congress. He comes from a very distinguished family in Alabama. It is sad that he has passed away.

At some later date, I will have more to say about Dr. Carmichael.

Mr. COCHRAN addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from Mississippi.

COMMENDING SENATOR HEFLIN

Mr. COCHRAN. Mr. President, first let me commend the distinguished Senator from Alabama for his introduction of the resolution on the subject of a constitutional amendment to balance the budget.

As the Senator knows, it has been an item of high priority in terms of planning for the legislative agenda for this new session of Congress. It is one of the three legislative measures that we hope to call up at the earliest time on the calendar for the attention of the Senate, for debate and for action.

We welcome, commend, and appreciate the support of the Senator from Alabama for this initiative. He has worked for many years on this subject and in a very effective and constructive way.

BILLS CONSIDERED READ A SECOND TIME

Mr. COCHRAN. Mr. President, I ask unanimous consent that all bills read a first time on January 4, 1995, be considered to have had their second reading and that objection to further proceedings thereon have been made.

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

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDING PARAGRAPH 2 OF RULE XXV

Mr. HEFLIN. Mr. President, I will be at committee hearings on the balanced budget amendment shortly, but I would like to oppose the Harkin amendment. It is my judgment that the rules have been effective over the years and I do not feel that we ought to change the rules pertaining to cloture and the right of extended debate.

We sometimes have different alignments pertaining to membership relative to our parties and therefore Senate rules affect us. The rule regarding the right to extended debate can be a two-edge sword at times, and I do not believe it should be changed.

But, in my judgment, the Senate is a deliberative body and the Senate ought not just be a smaller House of Representatives. I think that the present rules are operating effectively. I add my voice to those that are advocating that we continue with the present rule that we have.

I yield the floor.

AMENDING PARAGRAPH 2 OF RULE XXV

The PRESIDENT pro tempore. Under the previous order, the hour of 10:15 a.m. having arrived, the Senate will now resume consideration of Senate Resolution 14, which the clerk will report

The assistant legislative clerk read as follows:

A resolution (S. Res. 14) amending paragraph 2 of rule XXV.

The Senate proceeded to consider the resolution.

Pending: Harkin amendment No. 1, to amend the Standing Rules of the Senate to permit cloture to be invoked by a decreasing majority vote of Senators down to a majority of all Senators duly chosen and sworn.

AMENDMENT NO. 1

The PRESIDENT pro tempore. The time on the Harkin amendment shall be divided, with 30 minutes under the control of the Senator from West Virginia [Mr. BYRD] and 45 minutes under the control of the Senator from Iowa [Mr. HARKIN].

Mr. HARKIN. Mr. President, parliamentary inquiry. I understand we are under a time limit. Could the Chair inform the Senator what the time elements are right now that we are under?

The PRESIDENT pro tempore. The time on the Harkin amendment shall be divided, with 30 minutes under the control of the Senator from West Virginia [Mr. BYRD] and 45 minutes under the control of the Senator from Iowa [Mr. HARKIN].

Mr. HARKIN. I thank the Chair.

Mr. President, continuing the debate we had last night and to inform Senators who may not have been here and who were attending receptions for newly elected Senators, et cetera, I understand that, but let me bring Senators and their staffs up to date as to where we are.

At 11:30 today, if I am not mistaken, we will have a vote, I understand a tabling motion, made by the majority leader to table the amendment that Senator LIEBERMAN, Senator ROBB, Senator PELL, and I offered yesterday to change the cloture rule, rule XXII. Our amendment would change rule XXII to provide for a new procedure for ending filibusters in the U.S. Senate.

We did not throw out the filibuster completely, but our amendment makes a very modest approach toward ending the gridlock that has gripped this place over the last several years and is increasing in intensity in gridlock in this place.

But our proposal says—and let me make it very clear what our proposal or our amendment says—that on the first cloture vote you need 60 votes to end debate. Then, if you do not get the 60 votes, you can file another cloture motion. You have to wait 2 more days, you have another vote. Then you need 57 votes to end cloture. If you do not get it, you can file another cloture motion—again you need the 16 signatures to do that—wait 2 more days and then you get another vote and then you need 54 votes to end debate. If you do not get that, you can file one more cloture motion, wait 2 more days, and then you need 51 votes to get cloture and move to the merits of a bill.

Utilizing the different steps along the way, this would provide that, to get to the merits of a bill, a determined minority of the Senate who wanted to filibuster could slow it down for 19 days, 19 legislative days, which would be about a month. That is just getting to the bill.

There are other hurdles as a bill goes through the Senate. In fact there are six. There is the motion to proceed, there is the bill itself, there is the appointment of conferees, insisting on Senate amendments, disagreeing with the House, and then there is the conference report. So there are a minimum of six hurdles. That is not counting amendments.

Of course, when a bill comes to the floor someone could offer an amendment and that amendment can be filibustered. All we are saying is that in that first initial time you need 19 days. If you added up all the hurdles under our proposal you could slow a bill down for a minimum of 57 days, 57 legislative days. That would translate into about 3 months. So it is a modest proposal. We are not saying get rid of the filibuster, but we are saying at some point in time a majority of the Senate ought to be able to end debate and get to the merits of the legislation.

A distinguished group of American independents, Republicans and Democrats, formed a group called ''Action Not Gridlock.'' Former Senator Mac

Mathias, Republican, was on the board. Former Senator Goldwater, former Gov. Robert Ray of Iowa among Republicans; there are distinguished Democrats on it; also, independents. They commissioned a poll last summer that showed that 80 percent of independents, 74 percent of Democrats, and 79 percent of Republicans said that when enough time was consumed in debate, that after debate a majority ought to be able to get the bill to the floor. That a majority ought to be able, at some point, to end the debate.

So, the American people want this. They want us to get away from gridlock.

Let me show again the Senators what I am talking about in terms of gridlock what has happened in the last two sessions of Congress. We can see the use of filibuster going back to 1917 and going up here to 1994. In the last session of Congress, we had twice as many filibusters as we had just from 1981 to 1986, the last time Republicans were in charge of the Senate. We had 10 times more filibusters in the last Congress than we did in the entire years from 1789 to 1960. Add up all those years, we had 10 times more filibusters in the last Congress than we did in all those years. I am saying 10 times more in the Congress, on an average in Congress, than we did in the years during that period of time.

Prof. Bruce Oppenheimer, from the University of Houston, wrote an article in 1985, I believe it was, about Congress reconsidered. He made an important point. Let me read from Professor Oppenheimer's treatise. He said,

> Congress in the late 20th century is under more severe time constraints than at any point in its history. Pressures in the political and social environment have periodically forced Congress to deal with problems of time.

For example, in the early part of the 19th century most Members of Congress were not full-time politicians. They could not stay in Congress for large stretches of time. Crops needed planting and harvesting, small businesses required regular attention. Transportation was slow and arduous. But what has happened now, as Professor Oppenheimer has pointed out, is that the time pressures on Congress have increased precipitously. And because of the increased workload of Congress there is more time pressure and, therefore, the power of one Senator to threaten to filibuster is increased. I think Senators ought to keep that in mind.

So what we have is a situation where in the 103d Congress we had 32 filibusters, twice as many as we had in the entire 19th century. Not so much because more Senators are using the filibuster. It is because a handful of Senators understand that one Senator, because of the increased time pressures here, one Senator threatening a filibuster can hold this place up. And thus we have had gridlock.

I think, Mr. President, that it is important or at least noteworthy, let me put it that way, it is noteworthy that the first vote of this new Congress in the Senate will be a vote on whether we slay this dinosaur called a filibuster. It will be our first vote. It will take place at 11:30, a little over an hour from now. Will we heed what the voters have said, that they want this place to change? That they want us to be more productive. Or is it going to be ''business as usual?'' Stick with a filibuster.

You know the very word ''filibuster'' conjures up images of the past, horses and buggies, outdoor privies, lamplighters. The very word itself conjures up the 18th and 19th century. So, the first vote of this session, are we for change? Or are we for the status quo? Did we get the message in the election? Or are we going to give the American people more of the same of what they had over the last several years?

Senators hold the key to gridlock. One hundred Senators here at 11:30 hold the key to gridlock. Now is a chance to use this key to open the door to fresh ideas and to a new approach.

I say to my friends on the other side of the aisle, this could be one of the most productive sessions of the Senate in recent history. I may not agree with everything that Republicans are proposing, but they are in the majority and they ought to have the right to have us vote on the merits of what they propose.

Now, as a member of the minority I ought to have the right to debate. I have the unrestrained right of amendment; Nongermane amendments. You will hear a lot of talk about we do not want this body to become like the House. No, I do not either. You will hear about protections for minorities. And for small States and things like that. Those protections are written into the Constitution of the United States and cannot be taken away but by constitutional amendment. We have the right of unfettered debate in the Senate. We have the right to amend with nongermane amendments. We do not have a rules committee that tells us what we can offer and what we cannot offer. This gives the protections to the minority. And, yes, the right to slow things down. I want that right as a minority. I want to be able to slow down things if I think they are going too fast or going in the wrong direction. But, I do not believe that I as a member of the minority ought to have the right to absolutely stop something because I think it is wrong, that that is rule by minority.

Well, I just say if we do not use this key that we have, this key to open the door to get rid of the filibuster, if we do not, I can assure Senators and I can assure the American public that this trend in the use of filibuster is going to continue. This line next time will be even higher. I can assure you that will happen unless we get rid of the filibuster. If we maintain the filibuster, the American people will look to the Senate and say ''We elected a bunch of new Senators but 'business as usual.'''

Maybe I might just give a fair warning to my friends on the other side of the aisle. I think the American people were fed up with the way this place was operating. If they see it as ''business as usual'' and we continue this filibuster, my fair warning to my friends on the other side, 2 years from now it could be the other way around.

I know it is a tough vote. It will be a tough vote for Senators to come here and to vote to give up a little bit of their personal power, their personal privileges that they have here. I mean, I have a lot of power. One Senator has a lot of power under the present filibuster rules. I think for the good of this institution and for the good of this country we have to give up a little bit of our privilege and a little bit of our personal power for the good of this country. I do not blame Republicans for using the rules as they did last time. They used it fairly.

They used the rule that exists to stop legislation that they considered bad. Again, I do not know that that is the proper procedure for us. We have protections for the minority. As the USA Today editorial pointed out, the Constitution of the United States divides powers, provides for the separation of powers, splitting Congress into two parts and dividing Government among three branches, guaranteeing basic rights in the Constitution. We have those that protects the minority.

But I will close with my opening remarks, with this quote:

> It is one thing to provide protection against majoritarian absolutism; it is another thing again to enable a vexatious or unreasoning minority to paralyze the Senate and America's legislative process along with it.

I could not have said it better, and it was said by Senator ROBERT DOLE, February 10, 1971.

If Senator DOLE thought the filibuster was bad in 1971, certainly when we are down here, the filibuster has increased at least threefold on an annual basis since then. So it is time to get rid of this dinosaur. It is time to move ahead with the people's business in a productive manner.

Mr. President, I yield the floor, and I retain the remainder of my time.

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from West Virginia.

Mr. BYRD. Mr. President, the distinguished Senator from Iowa is a man of whom I am very fond. I admire him greatly. I admire his spunk, his courage, his tenacity, his determination to do what he thinks is the right thing. He serves on the Appropriations Committee with me and is a fine member of that committee and an excellent chairman of a subcommittee, but he is wrong in this instance.

He refers to the matter of unlimited debate as a dinosaur. He refers to unlimited debate as a dinosaur. He calls

the filibuster a dinosaur and has introduced a measure now that will kill this dinosaur. Mr. President, what he is doing here is, he is bringing a sledge hammer into the Chamber to kill a beetle—a beetle—not a dinosaur.

I note the presence on the floor of our colleague who is also a cosponsor of the resolution, the Senator from Connecticut. Does he wish to speak at this point? I would be happy to yield the floor for now.

Mr. LIEBERMAN. Mr. President, I thank the distinguished Senator from West Virginia. I would be most happy to listen to him for a while. I thank him very much for his courtesy.

Mr. BYRD. Mr. President, freedom of speech is of ancient origin. The Senators in the Roman Republic exercised freedom of speech. There were no inhibitions on the freedom of speech. The same thing was true with respect to the members of Parliament. Henry IV, who reigned from 1399 to 1413, publicly declared that the Commons and the Lords should have freedom of speech. There would be no inhibitions on their right to speak freely or to be questioned concerning their speeches.

In 1689, when the Commons designated William III of Orange and Mary as joint sovereigns, the Commons first extracted from William and Mary assurance that they, William III and Mary, would agree to a Declaration of Rights, to which they did agree. And then, in December of 1689, that Declaration of Rights was put in the form of legislation, and it has since been known as the English Bill of Rights.

In that English Bill of Rights, freedom to speak in Parliament was assured, and no member of Commons or the Lords could have his speech questioned or challenged in any place, I believe the words are, ''out of Parliament.'' In that English Bill of Rights, there is that guaranteed protection of freedom of speech. It is found in article 9 of the English Bill of Rights, and our forefathers copied that language almost word for word as it appears in section 6 of article I of the United States Constitution.

So there is the evidence from ancient times of the desire of free men and the needs of free men to be able to speak freely.

There were early examples of extended debate, unlimited debate, the so-called filibuster, the ''dinosaur.'' Cato utilized this dinosaur in the year 60 B.C. to prevent Caesar from having his way. Caesar wanted to stand as a candidate for consul. He had to be in Rome, the city itself, in order to stand as a candidate. But he was not in the city. He also wanted to be awarded a triumph. He had to be outside the city and come into the city for a triumph. So Caesar's friends in the Senate offered legislation to allow Caesar to stand for consul, the office of consul, while absent from Rome.

Cato frustrated the friends of Caesar by filibustering. The Roman Senate adjourned at sunset each day, and Cato used the time —this is Cato II, Marcus Porcius Cato Uticensis who committed suicide in the year 46 B.C. after Caesar won the battle of Thapsus.

Cato committed suicide because he knew that Caesar was coming to Utica. Cato urged the officers and other people in the military to flee, and he offered to give them the money so that they might leave Utica before Caesar arrived. He advised his own son to go to Caesar and to surrender to Caesar, but Cato did not take his own advice. He stayed in Utica and committed suicide in 46 B.C.

But in 60 B.C., Cato spoke at length in the Roman Senate to spin out the day, and he defeated the designs of Caesar's friends by the use of a filibuster. So we have a successful filibuster in the Roman Senate 2,055 years ago. I have not yet read that anybody arose on the Senate floor on that occasion to accuse Cato of resorting to a dinosaurian action to frustrate the wishes of Caesar and the designs of his friends in the Senate.

Unlimited debate—the filibuster—is of ancient origin.

Well, the distinguished Senator from Iowa says, ''I cannot find it in my Constitution that we must have unlimited debate in the Senate.'' I do not find it either. But we will find in this Constitution that each House may determine the rules of its own proceedings.

Mr. HARKIN. Might I ask an inquiry on that one point?

Mr. BYRD. Why, yes.

Mr. HARKIN. Because it is an important point the Senator raises. It raises a question——

Mr. BYRD. Will the Senator speak on his own time?

Mr. HARKIN. Mr. President, I will speak on my own time to propound the question.

Mr. BYRD. Except for the question. He may ask me a question. If he wants to make a statement, I hope he will make it on his own time.

Mr. HARKIN. I wish to propound a question.

Under the Constitution then, under the clause that each body can establish its own rules, inquiry: Can the Senate establish a rule that is clearly in contradiction to the Constitution of the United States?

Mr. BYRD. The Senate has not established a rule that is clearly in contradiction to the Constitution of the United States. Senators have had the liberty of unlimited debate in the Senate since 1806. In 1806, the rules were codified. Originally, in the Continental Congress, there was the previous question, and the previous question was provided in the original rules of the Senate up until 1806, at which time the rules were codified, and that provision for the previous question, which was to shut off debate, was dropped from the rules, in 1806. So we have had unlimited debate in the Senate a long time.

Aaron Burr, in 1805, when he left the Senate after presiding over the impeachment trial of Samuel Chase, urged the Senate to ''discard''—I believe he used the word ''discard''—the previous question.

Therefore, for almost 200 years now, the Senate has been without the previous question, which cuts off debate. The Senate is to determine its own rules, and in being the judge of its own rules it elected to dispose, get rid of, the previous question. The House of Representatives has the previous question, but the Senate does not. That was the judgment of the Senate. It has a right to make that judgment under the Constitution, and the Senate does not have the previous question today. Henry Clay wanted to bring back the previous question. Stephen A. Douglas wanted to bring back the previous question, but it was a very unpopular proposal among Senators.

How much time do I have remaining, Mr. President?

The ACTING PRESIDENT pro tempore. The Senator from West Virginia has used 14 minutes of his time and has 16 minutes remaining.

Mr. BYRD. I thank the Chair. Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Iowa has 28 minutes remaining of his time.

Mr. HARKIN. Mr. President, I yield 5 minutes to the Senator from Rhode Island.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I thank my colleague from Iowa and rise to congratulate him for his determination and consistency in tackling the thorny problem of reform of the Senate cloture rule.

I do so from the vantage point of 34 years in this body, during all of which I have supported cloture motions with but two exceptions: One involving debate on United States policy toward South Africa and the other legislative reapportionment.

I believe it apparent that rule XXII as it now stands has not served the Nation well, nor does it place this institution in a favorable light in the eyes of our people. Time after time in recent years, and with increasing frequency, two-fifths of the Senate, not a majority, determined the outcome of many of the issues before us.

Now the Senator from Iowa puts before us a proposed rule change which is ingenious and accommodating. It allows the advocates of cloture to keep trying to close debate at progressively lower thresholds, starting at three-fifths and gradually reducing it through four steps to a simple majority. Debate could continue for up to 13 days until that lowest threshold is reached, and even then, of course, the majority could still decline to invoke cloture.

It seems to me this is a reasonable proposal and one which would, I believe, provide ample opportunity to colleagues on this side of the aisle to

protect our interests in our new-found minority status.

So I hope the Senate will give serious and thoughtful consideration to the proposal of the Senator from Iowa and not reject it out of hand. It goes to the heart of what people expect of this body and should be treated accordingly. I might add in that connection that if we are unable to reach consensus on reform of our own rules to allow the majority to prevail, the larger constitutional issue of majority rule may need to be addressed.

For the moment, I trust we give full and fair consideration as we consider Senator HARKIN's creative effort to change rule XXII.

I yield the floor.

Mr. HARKIN. How much time do I have remaining, Mr. President?

The ACTING PRESIDENT pro tempore. The Senator from Iowa has 25 minutes remaining.

Mr. HARKIN. I thank the Chair.

I yield such time as he may consume to the Senator from Connecticut.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Iowa, and I thank the Chair.

I am very privileged to be a cosponsor with the Senator from Iowa of this amendment, and I congratulate him on his willingness to charge the fortress here, to try to remove one of the hurdles to this being a truly representative and productive body.

The filibuster may have made some sense at one point; it may have been a reasonable idea, but it in fact has been badly misused in our time. You can pick your favorite statistic, but the one that I saw a while ago was that there were more filibusters in the last session of the Senate than in the first 108 years combined. Others will tell you there have been more since 1990 than the preceding 140 years combined.

Whatever the years, it is pretty obvious we have come to a point in the history of this Chamber where the filibuster, the ability of one Member to stand up and stop the body from functioning effectively and to block the will of the majority, is a contributor to gridlock and to our inability to produce and, therefore, to public frustration which is in the air and we are attempting as best we can to respond to them.

The other body in its wisdom took some steps yesterday that I think are reflective of that mood and responding to it, and there are many things we can do in this Chamber along with those that were done yesterday in the other body. I think one of the most important is to alter the current rules of debate so far as they allow a single Senator or, in the synthetic filibusters, not the real filibusters that we have had in our time, allow a minority to threaten to debate interminably and by that means to block the majority from working its will.

I have just enormous respect for the distinguished Senator from West Virginia and, as I said in the Chamber last night, he is clearly the expert in this Chamber on the rules of the body and not only knows the rules of the body but knows from whence they come, their history, so when I speak in opposition to his position I do so with some humility and respect.

I would say on the question of the derivation of freedom of speech back to earlier times, English precedents or Roman precedents, and developing as it has in our time in the speech and debate clause in the Constitution, that I would respectfully offer this thought: That the Constitution and the great freedoms that it gives our people as they have been interpreted by the Supreme Court over the history of America, all have been at one point or another limited. In other words, we are given individual freedom, which is at the heart of what it means to be an American, by the Constitution, by the community. Although, of course, many of us feel that the ultimate source of our individual freedom goes beyond the community, beyond the Constitution, to our Creator, and I believe that the Founders and Framers very much were motivated by that religious impulse and that theological view of human nature.

But my point is this. Over our history, every right, including the sacred and fundamental right of free speech, has occasionally been limited because it was thought that its unlimited exercise threatened the safety and well-being, perhaps even the continuity and the survival of the community. Of course, there is the classic and perhaps limited expression, but it is a popular one, that you do not have the right to rise in a crowded theater and shout ''fire'' when there is no fire and create a pandemonium, a bedlam. And the limits go on and on: those that relate to libel and slander; the ways in which the Supreme Court, for instance, has wrestled with questions of obscenity, when is freedom of speech so offensive to the community that it threatens some of the fundamental values of the community?

This right of unlimited speech for Members of the Senate in the particular context of our rules, it seems to me, requires at this point, based on what we have experienced, limitations. Because the ability of an individual Senator to stop the process, the capacity of a minority to make it impossible for a majority to work its will and represent the majority of constituents back home, has come to a point where it has too often threatened the ability of this Chamber to function, to represent, to lead, to be truly deliberative in the sense that we mean it.

In its misuse the filibuster has also, I think, threatened not only the productivity and credibility of the U.S. Senate, but has contradicted some of the basic principles of our Government as expressed by the Framers of the Constitution. And one is this fundamental question of majority rule. It seems to me as I read the Federalist Papers and look at the Constitution that as concerned as the Framers were about individual rights and protection of the minority, they made a clear decision, which was that the Congress—and let me be more specific, that the Senate—was to be a majoritarian body; that the majority would rule; that there were other protections in the system for the minority. One was what we referred to as the republican form of government—small ''r''—which is to say the various checks and balances built into the system, the requirement in our system, to adopt a law, of the support of the Senate, the House, and the signature of the President.

Ultimately, if the minority rights were still threatened, an individual could go to court, and over our history it has been clear that the courts interpreting the Constitution have been there to protect the minority. But this was to be a majoritarian body. And this filibuster has turned that, in my opinion, upside down and allowed the minority to rule. Some who support the status quo on the filibuster say that it is there to protect the rights of the minority. But what about the rights of the majority? Some say that there is a danger of a tyranny of the majority. I say that there is a danger inherent in the current procedure of a tyranny of the minority over the majority, inconsistent with the intention of the Framers of the Constitution.

It is inconsistent in another specific way with the Constitution, and I will mention this briefly because it has been mentioned before. The Constitution states only five specific cases in which there is a requirement for more than a majority to work the will of this body: Ratification of a treaty, override of a Presidential veto, impeachment, adoption of a constitutional amendment, and expulsion of a Member of Congress. In fact, the Framers of the Constitution considered other cases in which a supermajority might have been required and rejected them. And we by our rules have effectively amended the Constitution—which I believe, respectfully, is not right—and added the opportunity of any Member or a minority of Members to require 60 votes to pass almost any controversial bill in this Chamber.

It is wrong. It has also made this a less accountable body. And I think accountability of elected officials is at the heart of democracy and all we stand for. It is less accountable in two ways. One, when we are allowed to defeat a measure on a procedural vote such as a filibuster, it cloaks us from having to stand up and vote on the merits, on the bill itself, and therefore, to some extent, it muddles our accountability and the record that we take back to our constituents.

Second, in another sense it makes it hard on the majority and those of us on this side of the aisle—and the majority

I am speaking of here is in a more partisan sense—those of us on the Democratic side experienced this over the last couple of years. Clearly not all the filibusters have been partisan. The opposition to the procedure is bipartisan and so is the support. But in a strict political partisan sense, it is hard for a majority to be held accountable fairly to the public if a minority, a party, for instance, can block the majority from attempting to work its will, from attempting to pass its program, and then, unfairly in some cases, the majority may be held accountable for that failure even though it was the minority who blocked action by filibustering that resulted in the failure to produce.

A lot of Democrats may have been held accountable for that on election day, November 8, 1994. But the wheel of history has turned and the majority is now on the other side of the aisle. Though it might seem inviting for Democrats to use the filibuster to confuse and frustrate the will of the majority here, it is not fair. The majority ought to have the opportunity to try to pass its program or be held accountable for it. And this filibuster frustrates that opportunity.

So, Mr. President, I understand, and the Senator from Iowa understands, that we are fighting upstream in this effort. But it is an effort that I think is at the heart of congressional reform, at the center of responding to the public frustration and the drop in respect for this Congress of ours which is so central to the relationship that those who govern have with those who are governed. When that trust is gone our democracy is in trouble. I think this is the time to begin to challenge this procedure. History shows us that on the other occasions when the filibuster rule has been changed, it generally was not changed on the first try. The Senator from Iowa and I would be pleasantly surprised if that were not the case today, but it probably will be the case. But I know he feels strongly, as I do, that we should continue this effort to work with our colleagues to see if we cannot find ways that will achieve adequate support to bring about a change in the existing filibuster procedure.

Again, I express my great admiration for the Senator from Iowa for taking this on. It is not an easy battle. It is not a popular battle. But it is the right fight to make and it is my privilege to be marching arm and arm with him on this one. I hope that when the vote is taken, we will be surprised, and I hope particularly that the support for our amendment is across party lines. I thank the Senator from Iowa for his leadership, for yielding his time to me, and I yield the floor.

Mr. HARKIN. Mr. President, I want to thank the Senator from Connecticut.

I repeat what I said last night, that we are delighted to have him back for another 6 years. There is one thing that marked the first 6 years here of the Senator from Connecticut, and that was his unending effort to make this place operate better, more openly, and to really make the Senate reflect the true will of the people. He has continued that effort today. I am proud to have him beside me in this battle. I thank him.

Mr. President, I came across this article called ''Renewing Congress.'' I thought it would be appropriate for me to bring it to the Senate's attention. Some people may view this as a liberal-conservative issue. I do not believe it is, in any way. But I wanted to point out that Norman Ornstein, of the American Enterprise Institute, which I think I can rightfully say is the more conservative think tank here in Washington, along with Thomas Mann of the Brookings Institution, which is more of a liberal organization, I guess you might say, put out this book earlier this year called ''Renewing Congress.'' I thought I would just read the part in it that they had regarding the filibuster:

> We believe much tougher steps are needed to prevent the abuse of holds and filibusters. The recent emergence of a partisan filibuster unprecedented in Senate history has made a bad situation even worse. We recommend two steps to deal with this problem. First, the Senate should return the filibuster to its classic model, with individual Senators required to engage in continuous debate day and night while all other business is put on hold. Second, the Senate should look hard at adopting a sliding scale for cloture votes, 60 votes required to cut off debate initially, 55 votes after a week of debate, and a simple majority 2 weeks after the initial cloture vote. This sliding scale could be applied to all filibusters.

Again, I just want to point out to Senators this is the view of Norman Ornstein of the American Enterprise Institute.

Mr. President, how much time do I have remaining now?

The PRESIDING OFFICER (Mr. STEVENS). The Senator has 11 minutes remaining.

Mr. HARKIN. I reserve the remainder of my time.

Mr. BYRD. Mr. President, my friends and others have stated that there are only five instances, in the Constitution, of reference to a supermajority. I call their attention to amendment 12 of the Constitution, which provides that in the election of a President by the House of Representatives, a quorum of Members must consist of two-thirds of the States; Members from two-thirds of the States. Also, in the election of a Vice President by the Senate, under amendment 12 to the United States Constitution, there must be two-thirds of the States represented to constitute a quorum in the Senate for that purpose.

So there are more instances of required supermajorities than five.

My time is limited. Let me yield 5 minutes to Mr. REID, who wishes to speak, and then I will use the remainder of my time.

Mr. REID. I thank the chairman very much

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I represent a State that is very large in area but small in numbers of people. The State of Nevada until recent years was a State that had very, very few people. We have had rapid growth in southern Nevada in recent years, and now we have many more people residing in the State of Nevada. But it is still a very small State in the numbers of people. During the last century, the State of Nevada had so few people in it that there was talk in this Chamber about doing away with the State of Nevada, there were so few people in it.

Mr. President, during those years a Senator from the State of Nevada had the same power as a Senator from the very populus State of New York. The Founding Fathers in their wisdom set up this Government so that a State like Nevada, a State like Alaska, a State like Vermont, having few people, would still have the ability to represent the people in that State on the same basis as those States that had large numbers of people.

Mr. President, I believe that the Founding Fathers were right. The power of the filibuster, even though it, in my opinion, has been abused in recent years, allows Senators representing lightly populated States to enjoy the same voting strength as other States. I have done it on one occasion in this Chamber. I was in my first year in the Senate and there was an issue that came up that was important to the State of Nevada, and I spoke on this floor for a long time. I was told that I hold the record for speaking longer on a filibuster than any first-year Senator. I am proud of the fact I did that, because it was an issue that mattered greatly to the people of Nevada.

So I approach this issue not on numbers of how many times there has been a filibuster; I approach it on the basis of the effort made by my good friends, Senator LIEBERMAN and Senator HARKIN. You can say anything you want to about it, but it is the end of the filibuster because any leader knows that he could schedule four votes, and on the fourth vote the filibuster would be over.

Mr. President, I speak as a Senator from the State of Nevada. I believe that the Founding Fathers were right in setting up the Constitution in the manner in which they did. I believe that if we are going to have the legislative form of Government that they set up, we do need to protect the integrity of States that are small in population like the State of Nevada.

So I want Members of this body to know that I will exercise my right as a Senator from the State of Nevada to speak as long as I can if, in fact, the

motion to table does not prevail because any State that is small in numbers should be on this floor protecting their individual States.

Changes in the Senate rules that allows this institution to operate more efficiently are welcome; however, the full-scale elimination of one of the most sacred rules of the Senate—the fulibuster—will not result in a more efficient Senate. In fact, it has the potential to result in the tyranny of the majority.

I do not support the patently abusive use of the filibuster that we saw last session. There were many instances of overwhelmingly supported legislation being killed because of partisan use of the filibuster. There is no doubt that this contributed to much of the gridlock we witnessed in the 103d Congress.

Few would argue that we saw the death of legislation that would have significantly improved the credibility of this body. The elimination of lobbyist gift giving and campaign finance reform are just a couple of examples of legislation that perished because of spurious use of the filibuster.

Those who chose to invoke the filibuster for partisan dilatory purposes were responsible for grinding Senate business to a halt. The numbers cited earlier by the Senator from Iowa—32 filibusters in the 103d Congress compared to a total of 16 in the entire 19th century—evidences its abuse by an obstinate partisan minority.

Having said all that, however, I do not support the elimination of the privilege. I say privilege because that is what I believe the filibuster to be. A unique privilege—to be used sparingly and only in those instances when a Member believes the legislation involves the gravest concerns to his or her constituents.

It is a unique privilege which distinguishes the intentionally deliberative operations of the Senate from the often passionate, bullish operation of the House. It is a unique privilege that serves to aid small States from being trampled by the desires of larger States. Indeed, I view the use of the filibuster as a shield, rather than a sword. Invoked to protect rights, not to suppress them.

In the House, the State of California has 52 Members in its delegation. My State, Nevada, has two Members. If California wants to roll Nevada in the House on a particular piece of legislation, that is their prerogative. But when that legislation makes it way to the Senate, one State will not be able to roll another simply by virtue of its size. In the Senate, we are all equal, regardless of which State we represent.

The people of Nevada know that in the Senate, Nevada stands on equal footing with the State of California and the State of Texas. They know that as long as I am here in the Senate, I will fight to protect their interests. And, because of the filibuster, they know I will be fighting on a level playing field

They know that when legislation that would result in a deleterious impact on the State of Nevada is steamrolled out of the House, I will do what is necessary to shield them from the enactment of this legislation. And, if this means invoking my rights as a Senator to engage in a protracted debate, I will—after careful deliberation—do so.

I would never allow the interests of Nevadans to be trampled simply because of the size of our State.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I want to respond to my friend from Nevada in two ways.

First of all, when he talks about our Founding Fathers, the Senator from Iowa is referring to James Madison.

Mr. BYRD. Mr. President, this time will be charged against Mr. HARKIN.

Mr. HARKIN. I was recognized.

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. James Madison, in Federalist No. 58—I just want to read it. I will give the Senator a copy.

> If more than a majority were required for a decision, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule. The power would be transferred to the minority.

The Senator from Nevada talks about small States. I represent a pretty small State. The Senator from Rhode Island, who spoke earlier, who is a cosponsor of this amendment, represents a State with two Congressmen per State, like other States. As he pointed out, in his 34 years here, he has never voted to sustain a filibuster. He has voted consistently for cloture to end debate.

Yet, I believe that the Senator has represented his State well. I believe that Rhode Island has not been the worse for that. Quite frankly, I think they have prospered because of the representation of Senator PELL.

The Constitution of the United States set up mechanisms to protect our small States—divided Government, checks and balances, vetoes, and yes, we have the right in the Senate to amend, to offer amendments.

The Senator from West Virginia has more than once mentioned the British Bill of Rights and about how no Member of Parliament is to be questioned in any other forum or speech or debate held on the floor of Parliament or in the House floors. That was adopted in our Constitution, article I, section 6. It is called the speech and debate clause.

I think maybe the Senator from West Virginia is confusing the speech and debate clause with unlimited debate. No one is challenging the speech and debate clause. No one is challenging the right of Senators to speak freely under article I, section 6.

So nowhere in the Constitution does it say they can speak forever. I also point out that even under the British Bill of Rights of 1689, there was still the previous question that the British have to end debate and move to the merits of legislation. I do not think we ought to confuse article I, section 6 with a Senate rule adopted in 1917 regarding cloture.

So I want to respond to the Senator from Nevada that I understand he wants to protect his State, and he should, and he has done a darn good job of it, I might add. But there are other protections—to protect our States and to make sure the big States do not run roughshod over us.

I yield the floor.

Mr. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1 minute of the 5 that were yielded to him. The Senator from Nevada has 1 minute left.

Mr. REID. Mr. President, I say respectfully to my friend from the State of Iowa that checks and balances and vetoes would not help the State of Nevada or the State of Alaska if the 52 Members of the congressional delegation of California decide they want to do something that would affect the State of Nevada. The only thing I can do to take on one of those big States is to exercise my ability to talk on this floor and explain my position in detail. Checks and balances has nothing to do with protecting a small State. Vetoes have nothing to do with it, unless you have the ear of the Chief Executive of this country. The filibuster is uniquely situated to protect a small State in population like Nevada.

Mr. BYRD. Mr. President, the proponents of the amendment have pointed out a number of times that most of the so-called filibusters have occurred in the last year, or last 2 or 3 years, and according to the chart, that is correct. What they are talking about, Mr. President, and what has gone around over this land is the idea that the failure to give unanimous consent to take up a matter constitutes a filibuster.

Mr. President, let us read the rules. We do not need the Harkin amendment to stop so-called filibusters on motions to proceed. We do not need that. Let us read the present rules. I urge Senators to read the rules of the Senate. Read the rules of the body to which they belong before they start proposing that the rules be changed.

Here is paragraph 2 of standing rule VIII:

> All motions made during the first 2 hours of a new legislative day to proceed to the consideration of any matter shall be determined without debate, except motions to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate shall be debatable.

In that case it will be debated.

Here we have paragraph 2 in Rule VIII of the Standing Rules of the Senate which says, in plain English words, that any motion made during the first 2 hours on a new legislative day to take up a matter is nondebatable.

What more do we need? Mr. President, I have been majority leader of this Senate twice. I have been leader of the minority once, for a period of 6 years. And there is no other Member of this body who has been majority leader other than I, except Mr. DOLE. I know what the powers of the majority leader are. One of the greatest arrows in his arsenal is the right of first recognition. So any majority leader can walk on this floor and certainly find a way to be recognized during the first 2 hours of a legislative day. Who determines whether it will be a new legislative day or not? That, too, is within the right and the powers of the majority leader. The majority leader can recess over until the next day, or he can move to adjourn, in which case the next meeting of the Senate will be considered as a new legislative day. During the first 2 hours of that new legislative day, any motion to take up a matter is nondebatable. With all these powers that a majority leader has, why can he not use paragraph 2 of rule VIII of the Standing Rules of the Senate to get around so-called filibusters on motions to proceed?

I have a parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state the inquiry.

Mr. BYRD. Has rule VII, has rule VIII, either of the two rules, been used once in the past Congress?

The PRESIDING OFFICER. The Chair is informed that they have not been used.

Mr. BYRD. There you are. Why do we not use the rules we now have? No, we do not do that. We ask unanimous consent to take up a matter and somebody objects over here. That is called a filibuster, and immediately a cloture motion is put in. Well, some would say that is a waste of time. You have to wait 2 days. The majority leader does not have to wait 2 days. He can go on to something else once the Chair reads the 16 names who are signatories of the cloture motion. He can go to something else. And 2 days later, the following day plus one, the cloture motion will ripen, and there will be a vote. So that is called a filibuster.

I daresay if you count those so-called filibusters in that red bar on the chart there, you will find most of them are cloture motions that were entered on requests to proceed that were objected to and immediately a cloture motion was filed. That is no filibuster. We go on to something else. We do not spend 2 days debating that matter. We go on to something else. That is no filibuster. But in order to enhance their arguments that we need to do away with the so-called filibuster rule, they spread it all over the country that the Senate is plagued with filibuster after filibuster after filibuster. There is no question but that our friends on the other side of the aisle, in my opinion, have recently abused the rule. But as I say, the rule is there. The majority leader has the power and he can move to proceed, and that is nondebatable under rule VIII.

Let me hasten to say that after that first 2 hours in a new legislative day, of course, any motion to proceed is debatable. I am willing to cure that. Let us change the rule and allow for a debatable motion with a limit thereon of, say, 2 hours on any motion to proceed to take up any measure or matter, with the exception of a measure affecting a rule change. I am for that. So there can be no excuse about holds on bills, and any majority leader worth his salt is not going to honor a ''hold'' except for a few days. When he gets ready to move, he will send word to the Senator who has a hold on a bill, as I did on a number of occasions to Senator DOLE. I said: Please tell the Senator I am going to move next week to take up thus and so, on which he has a hold. And the hold generally goes away. If it does not, there is no one man in the Senate that can tie up the Senate long. I can tie it up for as long as I can stand on my feet. That is not long.

It takes a very sizable minority in this Senate to hold up the Senate. It takes 41 Members of the Senate, a minority of 41 Members to really stop the process. And they say, well, I am for delay. We ought to have time to delay, to debate, but let us not give the minority the right to stop.

The minority sometimes is right, and a minority in the Senate often represents a majority out there beyond the beltway. Moreover, an extended discussion here may convince what is today a minority of the people out there as to what is really right, and it may change to a majority from a minority out there. So the minority can be right, and I say the minority should retain the right that it has had since 1806 in this Senate to stop a measure. If a measure is bad, it ought to be stopped.

Perhaps it can be amended and improved. But let us not do away with a rule here that gives this Senator, that Senator from Connecticut, that Senator from Iowa, that Senator from Nevada, that Senator from Mississippi, gives him the right to stand on his feet as long as his lungs will carry breath and his voice can be heard to stand up for the rights of his State.

This is a forum of the States. There is no other forum of the States in this Government. This is the forum of the States.

And a minority can be right. The States are equal in this body. But out there, for example, in New York, Pennsylvania, Ohio, Illinois, California, Texas, and Florida, there is a minority of the States but a majority of the population. You take away this right of unlimited debate, you may take away the right of a whole region of this country. The people of that region may be right. They may be in the majority as to population, but in the Senate, they may be in the minority.

So, Mr. President, let us not take away this right. As long as the U.S. Senate provides the right of unlimited debate, then the people's liberties will be assured.

An urge to be efficient is commendable, but not at the expense of thorough debate which educates the public and educates the Members. And there is a need in this body for more debate and not less.

Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. BYRD. Mr. President, the Founding Fathers were wise. The current rules are the result of experience and trial and testing over the period going back to the beginning of this republic. The previous question was done away with, as I have already stated, almost 200 years ago. Let us retain the right to debate. The majority, if it has the majority, can presently cut off debate and avoid many of the so-called filibusters by using the rules we have already. But most of the so-called filibusters, most of the so-called filibusters, have not been filibusters.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COCHRAN. Mr. President, will the Senator yield?

I thank the distinguished Senator from Iowa [Mr. HARKIN] for yielding.

When the Senator concludes his remarks at 11:30, I will move to table his amendment and ask for the yeas and nays.

I am opposed to this amendment, and I urge the Senate to vote for the motion to table it.

It has been my experience to observe the importance of the current cloture rules on several occasions in protecting legitimate minority interests here in the Senate. On at least one occasion it was a regional minority interest at stake—the ports that are located on the Gulf of Mexico.

It is obvious that the States on the gulf coast comprise a minority of the whole membership here, but when we banded together to debate at length a proposal to write into law a preference for Great Lakes ports over gulf coast ports under the Public Law 480 program, we were successful in assuring a decision that treated all port ranges fairly.

To assume that all uses of the right of unlimited debate are evil or ought to be restrained under a new cloture rule ignores the legitimate and important protection the rule now provides to all Senators, all minorities, and all regions of the country.

The one example I have cited related to a regional interest that would have been trampled under foot by a majority vote but for the leverage our region had the right to use, and did use to full advantage, under the unique Senate rule of unlimited debate.

I hope the Senate will act today to protect this rule from the injury that

would be done by the Harkin amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. HARKIN. Mr. President, the distinguished Senator from West Virginia has focused most of his attention and remarks on the motion to proceed, because that is where most of the problem lies. I admitted to that same thing myself last night.

But, to do away with the motion to proceed or to do away with the possibilities of a filibuster of a motion to proceed, only takes away one hurdle of six.

The Senator from West Virginia is right. You can file a motion to proceed, you can move on to other bills and get the cloture motion filed. But if you get to a bill and you filibuster the bill, it takes unanimous consent then to move off of that and pick up some other legislation.

Now, I submit that the reason most of the time that we have had objections to motions to proceed was because there was the implied threat that, if you did move ahead, there would be a filibuster on the bill. That threat was always there.

There are six hurdles: motion to proceed, cloture, disagreement with the House, insisting on amendments, appointing conferees, and a conference report. Any one of those can be filibustered. Any one of those can be filibustered.

If you take away the motion to proceed, you have only taken away one hurdle. In fact, I submit you would make the situation even worse, because at least under the motion to proceed you can move to other business.

Now, in 1975, the rules were changed.

Mr. BYRD. Will the Senator yield just for a correction?

Mr. HARKIN. Yes.

Mr. BYRD. I want to verify that this is correct with the Parliamentarian.

The Senator from Iowa says that if a measure is before the Senate it takes unanimous consent to go to another measure. That is not the case. That is not the case. I have been majority leader and minority leader and I know what I am talking about, but I wanted to verify it.

The leader can go to another measure by motion. It does not require unanimous consent.

Mr. HARKIN. Well, that motion is then debatable. That motion is then debatable and that motion can be filibustered. I believe the Senator is right.

Mr. BYRD. I wanted to correct the Senator on that point.

Mr. HARKIN. I do stand corrected on that.

But then there are other avenues. As I pointed out, there are other hurdles on the filibuster. You can get rid of the motion to proceed, but you still have all these other hurdles, and you can filibuster any one of them.

I might also add that I find it a curious argument of the Senator from West Virginia that, if the minority feels the legislation is bad, they ought to have a right to stop it.

Let me quote again from James Madison.

> If more than a majority [were required] for a decision . . ., the fundamental principle of free government would be reversed. It would be no longer the majority that would rule; the power would be transferred to the minority.

Maybe we have a fundamental disagreement here. I do not believe that the minority ought to be able to stop legislation they consider as bad. They ought to be able to amend it, slow it down, debate it, change public attitudes and opinions, go to their colleagues to get their opinions changed. But I find it curious that the Senator from West Virginia would say that a minority ought to have a right to stop legislation they consider bad. That is rule by the minority.

The Senator from West Virginia says a Senator ought to have a right to stand and speak until his breath runs out. But that is not the situation we have. Under the present rule XXII, you can start a filibuster and go home. It takes 60 Senators, three-fifths of those duly chosen and sworn, to break a filibuster. And you do not have 60 Senators. You do not have to stand here and talk at all. You can go home. We have seen that happen. We have seen that happen last year. So we do not have that situation.

Forget about Mr. Smith goes to Washington. That is not the situation we have today.

Mr. BYRD. Will the Senator yield?

Mr. HARKIN. Yes.

Mr. BYRD. His proposal does not correct that fact. Why does the Senator not offer a proposition that will provide cloture only by two-thirds of those present and voting or by three-fifths of those present and voting?

Mr. HARKIN. Well, if the Senator wants to propose that.

Mr. BYRD. No, I say, why does the Senator not do that? His proposal does not cure that.

Mr. HARKIN. Because, under my proposal, a Senator could stand here and talk until his breath runs out. Fifty-seven days we allow. I do not think any Senator here can speak for 57 days. So it is not as though we are taking away the right of a Senator to stand here and speak until his breath runs out.

Our amendment will allow 19 days, 19 legislative days, just to bring the bill up. Then, on the other hurdles, there is more. It is a total of 57 days that a determined Senator can filibuster a bill. And I have not even mentioned the amendments to the bill.

The Senator says we need time for more debate and not less. I agree with the Senator. I wish we could have more debates like this. I think they are good debates. Threaten to filibuster, the people go home.

I would close my remarks, Mr. President, by saying this is the first vote of this Congress in the Senate. I believe it is the most important vote of all the so-called reforms that we with will be voting on. We will reform the way we do business here, and we will apply the laws that apply to businesses to Congress, and we will have gift bans and all that. Fine.

This is the single most important reform. The people of this country want this body to operate more effectively. They do not want gridlock. Yes, we want the rights of the minority protected. We want the minority to be able to debate, to amend, to speak freely. To slow things down. As Washington said to Jefferson, ''to cool down the legislation.'' But to enable one or two or three Senators to stop everything? No. It is time to change. This is the single most important vote and I ask Senators to heed what the public said in November. They want change in this place. Not the status quo.

Mr. DOLE. Mr. President, during yesterday's debate, my distinguished colleague from Iowa, Senator HARKIN, incorrectly compared his current filibuster proposal with a proposal that I endorsed in 1971.

I would like to take a few moments now to set the record straight.

In 1971, rule XXII of the Standing Rules of the Senate required the affirmative vote of two-thirds of those Senators present in order for cloture to be invoked. As my colleagues know, the current rule XXII requires the affirmative vote of just three-fifths of the Members duly chosen and sworn in order to invoke cloture.

With this in mind, the rules change that I endorsed in 1971 is far different from the rules change proposed today by my colleague from Iowa. My proposal in 1971 would have reduced by one the number of votes required to limit debate each time a cloture petition was voted upon. On the first vote, an affirmative two-thirds of the Senators present and voting would have been required to invoke cloture; on the second vote, two-thirds less one of the Senators present and voting would have been required; on the third vote, two-thirds less two, and so on until the point of three-fifths of those present and voting was reached.

In other words, under the terms of my 1971 proposal, at no time would the number of votes needed, to invoke cloture have fallen below three-fifths of those Senators present and voting. The amendment offered by my colleague from Iowa, on the other hand, contemplates that the number of votes needed to invoke cloture would decline to 51, a simple majority, after a series of attempts to invoke cloture have failed.

So, Mr. President, there should be no misconceptions about where I stand. I oppose the amendment, offered by my distinguished colleague from Iowa. And

I have never endorsed his proposal, even in principle. Thank you for giving me the opportunity to make this clarification.

Mr. LEVIN. Mr. President, I share the concern of the proponents of this proposal to modify Senate rule XXII that the right to filibuster has been abused in the Senate in recent years.

In the entire 19th century only 16 filibusters occurred. In the 26 Congresses from 1919 to 1970, there were a total of 50 votes on cloture motions, an average of less than 2 cloture motions per Congress.

However, in the 103d Congress, the Senate's majority leader was forced to file a cloture petition to cut off a filibuster 72 times. The tactic was used repeatedly to stop legislation. Filibuster was piled upon filibuster until, at one point five were pending at the same time.

While minorities in Congress have, in the past, used the filibuster on matters of fundamental principle, to force compromise, it has recently been used to reject, frustrate, and prevent compromise. In the case of the campaign finance reform bill in the last Congress, a filibuster was used to prevent a conference committee from even being formed to discuss and work out the differences between the House and Senate legislation. A filibuster for that purpose had not been seen in the more than 200 years of Senate history.

However, we must be very careful not to discard the baby with the bathwater. The rules of the Senate protect the rights of the minority. Throughout American history the Senate has been the more deliberative body—sometimes for the good, other times not—but always assuring that matters of great consequence cannot be rammed through by a majority even if backed by the currents of sometimes changeable public passion.

I believe the cloture procedure should be reformed by reducing the number of opportunities for its use on the same matter. Currently, there are six opportunities, including the motion to proceed to its consideration and three motions necessary to send a measure to a conference committee with the House. In my view, the opportunity to extend debate through the use of what we have come to call filibuster should be preserved only on the consideration of a matter itself and on the conference report when it returns to the Senate.

The Senate is unique. We should not take for granted the tone of bipartisanship and civility which normally characterize this body. While we have our moments of heated debate and partisan rigidity, virtually everyone familiar with the Congress recognizes that the Senate, in contrast to the other body perhaps, is the arena in which the parties are more likely to join together in a spirit of bipartisanship or at least work together seeking areas of compromise. During my 16 years in the Senate, I've found that the best policies come from reaching across the aisle that divides the two parties.

This environment of compromise and comity grows in part from the existence of the rights of the minority in the Senate rules. All of us in the Senate know that the majority party can do little here without the cooperation and the votes of at least some Members of the minority. This improves the tone of our debate, the manner in which the leadership of each party proceeds, and, indeed, virtually everything of importance we do in the Senate. In a legislative body which operates solely on majority rule it is necessary only to possess the keys to the bulldozer.

Any party which gains the majority can prevail without the cooperation or support of any part of the minority. The majority knows that although it can be delayed, the final outcome is known. In the words of House Majority Leader RICHARD ARMEY, referring to the majority's plans for the marathon first day session of the House and urging the minority Democrats not to delay matters, ''The pain may be inevitable, but the suffering is optional.'' He meant that the majority knew what the outcome of all of the first day votes in the House of Representatives would be; the majority would prevail. The minority could delay, the minority could raise procedural roadblocks, but the final result was assured.

I am also concerned that although the proposal before us attempts to strengthen the hand of a majority frustrated in its efforts to accomplish its will by the minority, the procedure contemplated does not even assure that a majority is involved throughout. Since a cloture petition requires the support of only 16 Senators, a minority could force the series of cloture votes proposed without demonstrating majority support until the threshold is lowered to 51 votes. At that point, the measure might be sweetened by proponents in order to gain the necessary additional votes to then reach a majority and invoke cloture. This might be used as a means to limit debate on the final bill, the real bill.

Mr. President, while I believe that rule XXII should be modified, while I hope that our colleagues, as we begin the 104th Congress, will resist the temptation to abuse and trivialize the right to unlimited debate in the Senate, and while I greatly respect the creative effort of the Senator from Iowa to craft a reform of rule XXII, I will vote to table the amendment because I think it goes too far in weakening fundamental minority rights. However, I hope the search for ways to reform rule XXII will not stop here. I encourage the leadership of the Senate and the Rules Committee to examine ways to reduce abuse of the filibuster, including providing for limitation of debate on motions to proceed and on motions to send a measure to conference with the House.

The PRESIDING OFFICER. Under the previous order the Senator's time has expired. The Senator from Mississippi is recognized.

Mr. COCHRAN. I move to table the Harkin amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Iowa. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Colorado [Mr. CAMPBELL], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from West Virginia [Mr. ROCKEFELLER] are necessarily absent.

I further announce that the Senator from Vermont [Mr. LEAHY] is absent on official business.

I also announce that the Senator from Georgia [Mr. NUNN] is absent because of illness.

The result was announced—yeas 76, nays 19, as follows:

[Rollcall Vote No. 1 Leg.]

YEAS—76

Abraham	Exon	Lugar
Akaka	Faircloth	Mack
Ashcroft	Feinstein	McCain
Baucus	Ford	McConnell
Bennett	Frist	Mikulski
Biden	Glenn	Moynihan
Bond	Gorton	Murkowski
Bradley	Gramm	Murray
Breaux	Grams	Nickles
Brown	Grassley	Packwood
Burns	Gregg	Pressler
Byrd	Hatch	Reid
Chafee	Hatfield	Roth
Coats	Heflin	Santorum
Cochran	Helms	Shelby
Cohen	Hutchison	Simpson
Conrad	Inhofe	Smith
Coverdell	Inouye	Snowe
Craig	Jeffords	Specter
D'Amato	Johnston	Stevens
Daschle	Kassebaum	Thomas
DeWine	Kempthorne	Thompson
Dodd	Kohl	Thurmond
Dole	Kyl	Warner
Domenici	Levin	
Dorgan	Lott	

NAYS—19

Bingaman	Kennedy	Pryor
Boxer	Kerrey	Robb
Bryan	Kerry	Sarbanes
Bumpers	Lautenberg	Simon
Feingold	Lieberman	Wellstone
Graham	Moseley-Braun	
Harkin	Pell	

NOT VOTING—5

Campbell	Leahy	Rockefeller
Hollings	Nunn	

So the motion to lay on the table the amendment (No. 1) was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent to address the Senate for not to exceed 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator may proceed for 5 minutes.

Mr. BYRD. Mr. President, may we have order in the Senate.

The PRESIDING OFFICER. Will Senators please take their chairs.

The Senator seeks to address the Senate for 5 minutes. The Chair asks that Senators please clear the aisles.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I want to correct something I said last night I see in the RECORD.

I said last night that Brutus married the sister of Cato. Actually, Brutus was the son of Servilia, who was the sister of Cato—just to make that little correction for the record.

Mr. President, the Senate by a decisive vote has moved to table the matter presented to the Senate by Mr. HARKIN. This will not be the last time the effort will be made to amend rule XXII. That is why I impose on the Senate for these few minutes while there is something of a larger audience than there was last night and this morning. And I want to compliment the distinguished Senator from Iowa and the distinguished Senator from Connecticut. I thought we had some good exchanges in this debate.

But while there are Senators who are listening, let me point out to them, as I have pointed out in this debate, paragraph 2 of Rule VIII of the Standing Rules of the Senate.

Mr. President, most of the so-called filibusters have occurred on motions to proceed. Once that motion to proceed is approved, once the matter itself is taken up, generally the filibusters have gone away. It has too often been the practice here of late that when the leader asks unanimous consent to take up a matter, there is an objection heard from the other side of the aisle, and that is then called a filibuster. The leader immediately puts in a cloture motion. That is all the debate there is on that matter for the next few days. That is called a filibuster. And it goes out over the land what a horrendous thing this filibuster is, and Senators stand up here with these charts and point out how many times—10 times—as many filibusters in the last year as there were in the last 100 years, or something to that effect. Well, these are really not filibusters.

I think the rule has been abused. But I do not think we ought to take a sledgehammer to kill a beetle.

We have the standing rules here. Let me read paragraph 2, rule VIII. Senators should know what is in the current rules before they start so-called reforms of the Senate and of the rules.

Rule VIII, paragraph 2:

All motions made during the first two hours of a new legislative day to proceed to the consideration of any matter shall be determined without debate, except motions to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate shall be debatable.

As I ascertained through a parliamentary inquiry earlier today, that rule was never used in the last session.

So, Mr. President, the rules are here. The type of filibuster, the type of so-called filibuster that we have seen recently, which is filibuster by delay, with no debate on it, is not good. But most problems with this filibuster can be addressed within the existing rules, and I have just read the rule which has not been used. It was not used in the last session. It was not used in the session before that. And yet we complain about there being so many filibusters.

Mr. President, we can handle most of the minifilibusters around here. If there is a sizable minority, one that consists of 41 Members, that is a large minority. That minority may represent a majority of the people outside the beltway. Who knows?

I maintain that, as long as the United States Senate retains the right of unlimited debate, then the American people's liberties will not be endangered.

They do not have unlimited debate on the other side of the Capitol, and there are those over there who want the Senate to do away with the filibuster. But under the Constitution, each House shall determine its own rules. It is not my place to attempt to tell the other body what they should do with their rule. But this rule has been in effect since 1806 when the Senate did away with the previous question, when it recodified the rules in 1806. And it did so upon the recommendation of Aaron Burr, the Vice President, who, when he left the Senate in 1805, recommended that the previous question be done away with. It had not been used but very little during the previous years since 1789. So that rule on the previous question, which is to shut off debate, was eliminated from the Standing Rules of the Senate and it has been out of there ever since.

So, Mr. President, I commend Senators for voting to table the Harkin amendment. I also commend those who differ with me. I commend those who offered the amendment to change the rule. I think the Senate has acted wisely in retaining the rule that has governed our proceedings since 1806. I hope that Senators will read the Standing Rules of the Senate.

I thank all Senators for their patience.

The PRESIDING OFFICER (Mr. SHELBY). The question now is on the adoption of the resolution.

The resolution (S. Res. 14) was agreed to, as follows:

S. RES. 14

Resolved, That paragraph 2. of Rule XXV of the Standing Rules of the Senate is amended for the 104th Congress as follows:

Strike ''18'' after ''Agriculture, Nutrition and Forestry'' and insert in lieu thereof ''17''.

Strike ''29'' after ''Appropriations'' and insert in lieu thereof ''28''.

Strike ''20'' after ''Armed Services'' and insert in lieu thereof ''21''.

Strike ''21'' after ''Banking, Housing and Urban Affairs'' and insert in lieu thereof ''16''.

Strike ''20'' after ''Commerce, Science, and Transportation'' and insert in lieu thereof ''19''.

Strike ''20'' after ''Energy and Natural Resources'' and insert in lieu thereof ''18'';

Strike ''17'' after ''Environment and Public Works'' and insert in lieu thereof ''16''.

Strike ''19'' after ''Foreign Relations'' and insert in lieu thereof ''18''.

Strike ''13'' after ''Governmental Affairs'' and insert in lieu thereof ''15''.

Strike ''14'' after ''Judiciary'' and insert in lieu thereof ''18''.

Strike ''17'' after ''Labor and Human Resources'' and insert in lieu thereof ''16''.

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

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

The motion to lay on the table was agreed to.

THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

The PRESIDING OFFICER. The Senate will now proceed to S. 2. The clerk will report.

The bill clerk read as follows:

A bill (S. 2) to make certain laws applicable to the legislative branch of the Federal Government.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The majority leader.

RESOLUTION AMENDING RULE XXV

Mr. DOLE. Mr. President, I send an unrelated resolution to the desk and ask for its immediate consideration. It has to do with committee assignments. I think it has been cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 27) amending rule XXV.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

The resolution (S. Res. 27) reads as follows:

Resolved, That at the end of Rule XXV, add the following:

A Senator who on the date this subdivision is agreed to is serving on the Committee on Armed Services, and the Committee on Environment and Public Works, may, during the One Hundred Fourth Congress, also serve as a member of the Committee on Governmental Affairs, but in no event may such Senator serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

The Senate continued with the consideration of the bill.