and decisively if the CICIG is to continue as a meaningful body. I urge U.N. Secretary General Ban Ki Moon to appoint a new CICIG Commissioner with demonstrated expertise in investigating and prosecuting organized criminal networks so the advances of the CICIG continue under new leadership. Equally important is the integrity and continuity of CICIG's professional staff.

In Guatemala, the government needs to address the problems that so frustrated Director Castresana. Fortunately, Guatemala's Constitutional Court annulled the selection of the attorney general, who subsequently resigned. This is a positive step, but it needs to be followed up. Guatemala's next attorney general should have a strong commitment to working closely with and supporting the efforts of the CICIG, as well as reform of the National Police, the establishment of a high impact court for cases of organized crime with heightened security for judges, witnesses and prosecutors, a maximum security jail, and other initiatives by the Guatemalan Legislature that would facilitate the investigation and prosecution of organized crime.

It is not just the attorney general, however. Implementation of many of the CICIG's recommendations has been repeatedly delayed. The entire Guatemalan Government—the executive, legislature and the courts—must act decisively to demonstrate that it can implement urgent anti-impunity reforms, strengthen and professionalize its law enforcement and judicial institutions, and prove that it can be a partner in the fight against organized crime. Reforming the National Police, which is widely perceived as corrupt, ineffective and unaccountable, and whose officers are under-paid, under-trained, and under-equipped, is a critical priority. I hope there is convincing progress in these areas soon.

The United States is providing assistance to bolster Guatemala's institutions, particularly through our Central America Regional Security Initiative. But as chairman of the Appropriations Subcommittee on the Department of State and Foreign Operations, I would find it difficult to justify investing further resources in Guatemala's judicial system unless its own government demonstrates a strong commitment to ending impunity and combating organized criminal networks and corruption, which must be rooted out from their entrenched positions within Guatemala's state institutions.

I urge the Guatemalan Government to show, at this critical moment, its firm commitment to the CICIG and to taking the steps necessary to end impunity and strengthen the rule of law so the United States can continue to partner with Guatemala to tackle its many challenges.

EXTENDING FAMILY LEAVE

Mr. LEAHY. Mr. President, today, the Obama administration took another step toward ensuring equal treatment for all Americans by extending family leave to lesbian, gay, bisexual and transgender—LGBT—employees. Earlier this year, I praised President Obama for directing the Department of Health and Human Services to issue regulations ensuring hospital visitation rights for same-sex couples. Now these same couples will be treated fairly when their children are sick, injured, or in need of care. Both of these measures promote the value of strong families and enduring relationships.

There is a tragic history of discrimination in the workplace, but fortunately, we are making progress to end it. In 1993, Congress passed the Family Medical Leave Act, FMLA, allowing employees to take reasonable unpaid leave for certain family and medical reasons. The FMLA sought to promote equal employment opportunities for men and women. Unfortunately, the benefits of that law were not extended to LGBT families. Under the Department of Labor's new interpretation of ''son or daughter'' under the FMLA, a gay or lesbian employee may now take family and medical leave to care for a newly born, newly adopted, or sick child of the employee's same-sex partner, even if the employee does not have a biological or legal relationship with the child.

The fight for equal rights protections continues in Congress. I am a proud cosponsor of the bipartisan Domestic Partnership Benefits and Obligations Act of 2009, which would provide domestic partners of Federal employees all of the protections and benefits afforded to spouses of Federal employees, including participation in applicable retirement programs, compensation for work injuries, and health insurance benefits. I also support the Tax Equity for Health Plan Beneficiaries Act of 2009, which would end the taxation of health benefits provided to domestic partners in workplaces that provide domestic partner health benefits to their employees.

Respecting the rights of all hard-working Americans to care for their children in times of crisis is something every American should support.

RECOGNIZING THE LOS ANGELES LAKERS

Mrs. BOXER. Mr. President, I ask my colleagues to join me in congratulating the 2009–2010 National Basketball Association champions, the Los Angeles Lakers. In winning their 16th championship, and the 5th of this decade, the Lakers cemented their status as one of the most successful and storied franchises in the history of professional sports.

Led by a dedicated management and coaching staff and with contributions from an outstanding roster of perennial all-stars, reliable veterans and exciting young players, the Lakers began their successful defense of their 2008–2009 championship by compiling the best regular season record in the Western Conference.

During the playoffs, the Lakers stood tall against challengers to their title as they defeated the Oklahoma City Thunder, the Utah Jazz, and the Phoenix Suns en route to winning the Western Conference title.

In the NBA finals, the Lakers triumphed against their archrivals, the Boston Celtics, in a fiercely contested seven-game series that gripped basketball fans from coast to coast and the world over. True to their reputation as a team of great resolve and determination, the Lakers overcame a deficit in the last quarter of the deciding game in order to ensure that the NBA championship trophy will reside in Los Angeles for at least another year.

It is my pleasure to congratulate the members of the Lakers organization who worked tirelessly to bring the championship to Los Angeles and Southern California.

As the Los Angeles Lakers and their fans celebrate the 2009–2010 championship campaign, I congratulate them on another remarkable and memorable season and wish them continued success in future seasons.

UNIVERSITY OF ARKANSAS ATHLETES AND COACHES

Mrs. LINCOLN. Mr. President, today I recognize University of Arkansas athletes and coaches who are leading an effort to challenge northwest Arkansas volunteers to pack 2 million meals in 24 hours for people affected by the earthquake in Haiti. They are attempting to break the one-day record for the most food packed, which was set in Kansas City earlier this year.

Under the leadership of Jeff Long, athletic director of the University of Arkansas at Fayetteville, athletes and volunteers will meet at the Randal Tyson Track Center on the University campus June 25 and 26 to work 2-hour shifts filling and sealing packets of soy power, rice, dried vegetables, and vitamins. The packets will reach Haitians 5 to 7 days later after being transported by ground and sea transportation.

Called Razorback Relief Operation Haiti, the effort is also led by former Razorback golfer Rich Morris and sophomore track athlete Terry Prentice, a member of the student athlete advisory committee.

I commend the entire northwest Arkansas community for pulling together to help their global neighbors in need. These athletes and volunteers represent the best of Arkansas, and I am proud of their efforts.

SECRET HOLDS

Mr. UDALL of New Mexico. Mr. President, the Senate Rules Committee held another important hearing today to review yet another example of how the Senate rules are abused. I want to thank Chairman SCHUMER again for holding these hearings—they have been

invaluable in exploring ways to make the Senate work better for our country.

Over the past few months during this series of hearings, we have discussed and debated example after example of how the filibuster in particular—and the Senate's incapacitating rules in general—too often stand in the way of achieving real progress for the American people.

Today's hearing topic—secret holds and the confirmation process—was just one more example of how manipulation of the rules continues to foster a level of gridlock and obstruction unlike any we have seen before.

Senators WYDEN, GRASSLEY, and MCCASKILL testified at the hearing about their efforts to end the practice of secret holds. I applaud their work and dedication to transparency in government. Their fight to end the practice of secret holds is a worthy one that I wholeheartedly support.

Earlier this year I was proud to sign on to Senator MCCASKILL's letter to the majority and minority leaders, in which we pledged to no longer place anonymous holds and asked for Senate leadership to end the practice altogether.

At today's hearing, Senator MCCASKILL said that she has gathered enough support to surpass the 67-vote threshold required to consider and amend the Senate rules. That is no small task, as everyone in the Senate would attest. She should be congratulated for her work, as should all of our colleagues—Democrat and Republican—who have signed on to this effort. This bipartisan effort is proof that we are capable of working together.

But the mere fact that we have to have this conversation, that Senator MCCASKILL had to work for months for 67 votes to change rules that the Constitution clearly authorizes us to do with a simple majority vote, illustrates that secret holds are just another symptom of a much larger problem.

That problem is the Senate rules themselves.

The current rules—specifically rules V and XXII—effectively deny a majority of the Senate the opportunity to ever change its rules. This is something the drafters of the Constitution never intended.

As I have explained numerous times in committee hearings and here on the floor, a simple majority of the Senate can adopt or amend its rules at the beginning of a new Congress because it is not bound by the rules of the previous Congress.

Many colleagues, as well as constitutional scholars, agree with me. As my esteemed colleague from Utah, Senator HATCH, stated in a National Review article in 2005:

> The Senate has been called a 'continuing body.' Yet language reflecting this observation was included in Senate rules only in 1959. The more important, and much older, sense in which the Senate is a continuing body is its ongoing constitutional authority to determine its rules. Rulings by vice presidents of both parties, sitting as the President of the Senate, confirm that each Senate may make that decision for itself, either implicitly by acquiescence or explicitly by amendment. Both conservative and liberal legal scholars, including those who see no constitutional problems with the current filibuster campaign, agree that a simple majority can change Senate rules at the beginning of a new Congress.

It is through this path—by a majority vote at the beginning of the next Congress—that we can reform the abuse of holds, secret filibusters, and the broken confirmation process. We can end the need for multiple cloture votes on the same matter, and we can instead begin to focus on the important business at hand.

Now, critics will argue that the two-thirds vote requirement for cloture on a rules change is reasonable. They'll say that Senator MCCASKILL managed to gather 67 Senators, so it must be an achievable threshold.

As I said at today's hearing, I commend Senator MCCASKILL for her diligence in building support to end secret holds. But I think it is also important to understand that other crucial reform efforts have failed because, inexplicably, it takes the same number of Senators to amend our rules as it takes to amend the U.S. Constitution.

As Senators WYDEN and GRASSLEY said in their testimony today, their efforts to end secret holds goes back more than a decade. Indeed, the effect of holds, on both legislation and the confirmation of nominees, is hardly a new problem.

In January 1979, Senator BYRD—then majority leader—proposed changing the Senate rules to limit debate to 30 minutes on a motion to proceed. Doing so would have significantly weakened the power of holds—and thus curbed their abuse.

At the time, Leader BYRD took to the Senate Floor and said that unlimited debate on a motion to proceed, ''makes the majority leader and the majority party the subject of the control and the will of the minority. If I move to take up a matter, then one senator can hold up the Senate for as long as he can stand on his feet.'' Despite the moderate change that Senator BYRD proposed, it did not have the necessary 67 votes to overcome a filibuster.

Efforts to reform the motion to proceed have continued since.

In 1984, a bipartisan study group recommended placing a 2-hour limit on debate of a motion to proceed. That recommendation was ignored.

And in 1993, Congress convened the Joint Committee on the Organization of Congress to determine how it can be a better institution. Senator Pete Domenici, my immediate predecessor, was the co-vice chairman of the committee. At a hearing before the committee, he said, ''If we abolish [the debatable motion to proceed], we have gone a long way to diffusing the validity of holds, because a hold is predicated on the fact that you can't get [a bill] up without a filibuster.''

The final report of that joint committee stated: ''There was significant agreement that the motion to proceed to a bill should not be debatable, or that debate on the motion should be limited to 2 hours.'' Despite the recommendation, nothing came of it.

And here we are again today—31 years after Senator BYRD tried to institute a reform that members of both parties have agreed is necessary.

Talking about change, and reform, does not solve the problem. We can hold hearings, convene bipartisan committees, and study the problem to death. But until we agree that the Constitution provides the right for each Senate to adopt its rules of proceedings by a simple majority vote, there will be no real reform.

Recognizing our constitutional right to change Senate rules by a majority will not only allow reform, but it will help prevent abuse. Members are less likely to abuse a rule if they know that it can be changed by a majority in the next Congress. Conversely, if they think it takes 67 votes to change the rule, there is no disincentive against abuse.

I look forward to future hearings in the Rules Committee and exploring ways that we can bring needed reform to the Senate at the beginning of the 112th Congress.

I ask unanimous consent that an April 19 Roll Call article titled, ''In Senate, Motion to Proceed' Should be Non-Debatable'' and Senator HATCH's 2005 article from the National Review Online be printed in the RECORD.

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

[From Roll Call, Apr. 19, 2010]

STEVENSON: IN SENATE,''MOTION TO PROCEED'' SHOULD BE NON-DEBATABLE

(By Charles A. Stevenson)

There's a simple step the Senate could take that would prevent a lot of the current delay and obstruction, while still permitting lawmakers to debate some controversial matters at length.

The ''motion to proceed'' should be made non-debatable and subject to an immediate majority-rule vote.

This may seem like an arcane parliamentary matter, but in practice the chance to kill a bill or nomination before it is open to debate and amendment is a key weapon in the hands of obstructionists. They don't even have to oppose the measure; they just argue that ''now is not the time'' to take it up. In fact, in the past 20 years, more than one-fourth of the cloture petitions to end debate have been on motions to proceed.

Maybe the Senate, under pressure from voters and stymied by the recent surge in filibusters, will change or repeal the current rule that requires a 60-vote supermajority to cut off debate. But that isn't likely, since it takes 67 votes to change the rules and since all Senators can envision circumstances when they might want to fight even though outnumbered.

Even if lawmakers eliminated the 60-vote rule, obstructionists would retain numerous tools to block or delay action.

A compromise might be found on the motion to proceed, which would have substantial additional benefits while still preserving

the right of extended debate on substantive matters.

Right now, the motion to take up legislation is non-debatable only in very special circumstances: if the Senate has adjourned rather than recessing at the end of the previous day, if it has a period of morning business the next day and if it is in the second hour of the session. Even then, the bill goes back to the calendar if debate continues at the end of morning business.

The biggest problem in the Senate's current rules isn't that the majority can't work its will, but that a handful of Senators can clog the legislative stream, preventing action even on broadly supported measures.

Cutting off debate requires a day's wait after the first cloture petition is filed, and then 30 more hours of debate even if cloture is invoked. This means that the leadership needs at least four days just to end debate on the motion to proceed, plus many more on controversial amendments.

Four days on one measure is four days that can't be devoted to other matters—and the Senate has averaged only 167 days in session each year this decade.

Making the motion to proceed non-debatable would not only reduce the opportunities for filibusters but would also end the practice of individual ''holds'' on bills and nominations.

Those holds aren't in the rules, but they are the result of rules that require, for example, the Senate to take up bills and nominations in the order they were added to the calendar—that is, oldest first, with more urgent matters or more recent versions delayed until all previous matters have been disposed of.

A non-debatable motion to proceed could still be rejected by majority vote, and a matter being debated could still be filibustered, but the opponents would have to muster their troops, whereas now a single Member can hold the whole Senate hostage.

There are other rules changes that the Senate might adopt to have a more orderly and businesslike legislative process.

It could change the rule (XIX) that requires that ''all debate shall be germane and confined to the specific question then pending before the Senate'' for only the first three hours and it could enforce more rigorously the section of that rule that ''no Senator shall speak more than twice upon any one question in debate on the same legislative day.''

Senators could also drop the provision saying that the rules continue from one Congress to another unless changed by a two-thirds vote. That was added in 1959 under pressure from Senators fighting civil rights bills in order to overturn a ruling that would have allowed each new Congress to adopt rules by majority vote—as the House of Representatives does every two years.

But if Senators are unwilling to change the basic rule on filibusters, they should at least make the motion to proceed non-debatable so that the Senate can get to work without petty delays.

[From the National Review Online, Jan. 12, 2005]

CRISIS MODE: A FAIR AND CONSTITUTIONAL OPTION TO BEAT THE FILIBUSTER GAME

(By Senator Orrin G. Hatch)

Judicial nominations will be one of the most important issues facing the Senate in the 109th Congress and the question is whether we will return to the tradition of giving nominations reaching the Senate floor an up or down vote. The filibusters used to block such votes have mired the judicial-confirmation process in a political and constitutional crisis that undermines democracy, the judiciary, the Senate, and the Constitution. The Senate has in the past changed its procedures to rebalance the minority's right to debate and the majority's right to decide and it must do so again.

Newspaper editorials condemning the filibusters outnumber supporting ones by more than six-to-one. Last November, South Dakotans retired former Senate Minority Leader Tom Daschle, in no small part, because he led the filibuster forces. Yet within hours of his election to succeed Senator Daschle as Minority Leader, Senator Harry Reid took to the Senate floor to defend them. Hope is fading that the shrinking Democratic minority will abandon its destructive course of using filibusters to defeat majority supported judicial nominations. Their failure to do so will require a deliberate solution.

DIAGNOSING THE CRISIS

If these filibusters were part of the Senate's historical practice or, as a recent NRO editorial put it, merely made confirming nominees more difficult, a deliberate solution might not be warranted. But this is a crisis, not a problem of inconvenience.

Senate rules reflect an emphasis on deliberation and debate. Either by unanimous agreement or at least 60 votes on a motion to invoke cloture under Rule 22, the Senate must end debate before it can vote on anything. From the Spanish filibustero, a filibuster was a mercenary who tries to destabilize a government. A filibuster occurs most plainly on the Senate floor when efforts to end debate fail, either by objection to unanimous consent or defeat of a cloture motion. During the 108th Congress, Senate Democrats defeated ten majority-supported nominations to the U.S. Court of Appeals by objecting to every unanimous consent request and defeating every cloture motion. This tactic made good on then-Democratic Leader Tom Daschle's February 2001 vow to use ''whatever means necessary'' to defeat judicial nominations. These filibusters are unprecedented, unfair, dangerous, partisan, and unconstitutional.

A POLITICAL CRISIS

These are the first filibusters in American history to defeat majority supported judicial nominations. Before the 108th Congress, 13 of the 14 judicial nominations on which the Senate took a cloture vote were confirmed. President Johnson withdrew the 1968 nomination of Abe Fortas to be Supreme Court chief justice the day after a failed cloture vote showed the nomination did not have clear majority support. In contrast, Democrats have now crossed the confirmation Rubicon by using the filibuster to defeat judicial nominations which enjoy clear majority support.

Focusing on President Clinton's judicial nominations in 1999, I described what has been the Senate's historical standard for judicial nominations: ''Let's make our case if we have disagreement, and then vote.'' Democrats' new filibusters abandons this tradition and is unfair to senators who must provide the ''advice and consent'' the Constitution requires of them through a final up or down vote. It is also unfair to nominees who have agreed, often at personal and financial sacrifice, to judicial service only to face scurrilous attacks, trumped up charges, character assassination, and smear campaigns. They should not also be held in permanent filibuster limbo. Senators can vote for or against any judicial nominee for any reason, but senators should vote.

These unprecedented and unfair filibusters are distorting the way the Senate does business. Before the 108th Congress, cloture votes were used overwhelmingly for legislation rather than nominations. The percentage of cloture votes used for judicial nominations jumped a whopping 900 percent during President Bush's first term from the previous 25 years since adoption of the current cloture rule. And before the 108th Congress, the few cloture votes on judicial nominations were sometimes used to ensure up or down votes. Even on controversial nominees such as Richard Paez and Marsha Berzon, we invoked cloture to ensure that we would vote on confirmation. We did, and both are today sitting federal judges. In contrast, these new Democratic filibusters are designed to prevent, rather than secure, an up or down vote and to ensure that targeted judicial nominations are defeated rather than debated.

These filibusters are also completely partisan. The average tally on cloture votes during the 108th Congress was 53–43, enough to confirm but not enough to invoke cloture and end debate. Democrats provided every single vote against permitting an up or down vote. In fact, Democrats have cast more than 92 percent of all votes against cloture on judicial nominations in American history.

A CONSTITUTIONAL CRISIS

Unprecedented, unfair, and partisan filibusters that distort Senate procedures constitute a political crisis. By trying to use Rule 22's cloture requirement to change the Constitution's confirmation requirement, these Democratic filibusters also constitute a constitutional crisis.

The Constitution gives the Senate authority to determine its procedural rules. More than a century ago, however, the Supreme Court unanimously recognized the obvious maxim that those rules may not ''ignore constitutional restraints.'' The Constitution explicitly requires a supermajority vote for such things as trying impeachments or overriding a presidential veto; it does not do so for confirming nominations. Article II, Section 2, even mentions ratifying treaties and confirming nominees in the very same sentence, requiring a supermajority for the first but not for the second. Twisting Senate rules to create a confirmation supermajority undermines the Constitution. As Senator Joseph Lieberman once argued, it amounts to ''an amendment of the Constitution by rule of the U.S. Senate.''

But don't take my word for it. The same senators leading the current filibuster campaign once argued that all filibusters are unconstitutional. Senator Lieberman argued in 1995 that a supermajority requirement for cloture has ''no constitutional basis.'' Senator Tom Harkin insisted that ''the filibuster rules are unconstitutional'' because ''the Constitution sets out . . . when you need majority or supermajority votes in the Senate.'' And former Senator Daschle said that because the Constitution ''is straightforward about the few instances in which more than a majority of the Congress must vote. . . . Democracy means majority rule, not minority gridlock.'' He later applied this to judicial nomination filibusters: ''I find it simply baffling that a Senator would vote against even voting on a judicial nomination.'' That each of these senators voted for every judicial-nomination filibuster during the 108th Congress is baffling indeed.

These senators argued that legislative as well as nomination filibusters are unconstitutional. Filibusters of legislation, however, are different and solving the current crisis does not require throwing the entire filibuster baby out with the judicial nomination bathwater. The Senate's authority to determine its own rules is greatest regarding what is most completely within its jurisdiction, namely, legislation. And legislative filibusters have a long history. Rule 22 itself did not even potentially apply to nominations until decades after its adoption. Neither America's founders, nor the Senate that

adopted Rule 22 to address legislative gridlock, ever imagined that filibusters would be used to highjack the judicial appointment process.

TRYING TO CHANGE THE SUBJECT

Liberal interest groups, and many in the mainstream media, eagerly repeat Democratic talking points trying to change, rather than address, the subject. For example, they claim that, without the filibuster, the Senate would be nothing more than a ''rubberstamp'' for the president's judicial nominations. Losing a fair fight, however, does not rubberstamp the winner; giving up without a fight does. Active opposition to a judicial nomination, especially expressed through a negative vote, is the best remedy against being a rubberstamp.

They also try to change the definition of a filibuster. On March 11, 2003, for example, Senator Patrick Leahy, ranking Judiciary Committee Democrat, used a chart titled ''Republican Filibusters of Nominees.'' Many individuals on the list, however, are today sitting federal judges, some confirmed after invoking cloture and others without taking a cloture vote at all. Invoking cloture and confirming nominations is no precedent for not invoking cloture and refusing to confirm nominations.

Many senators once opposed the very judicial nomination filibusters they now embrace. Senator Leahy, for example, said in 1998: ''I have stated over and over again. . .that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported.'' Since then, he has voted against cloture on judicial nominations 21 out of 26 times. Senator Ted Kennedy, a former chairman of the Judiciary Committee, said in 1995 that ''Senators who believe in fairness will not let a minority of the Senate deny [the nominee] his vote by the entire Senate.'' Since then, he has voted to let a minority of the Senate deny judicial nominees a vote 18 out of 23 times.

Let me put my own record on the table. I have never voted against cloture on a judicial nomination. I opposed filibusters of Carter and Clinton judicial nominees, Reagan and Bush judicial nominees, all judicial nominees. Along with then-Majority Leader Trent Lott, I repeatedly warned that filibustering Clinton judicial nominees would be a ''travesty'' and helped make sure that every Clinton judicial nomination reaching the full Senate received a final confirmation decision. That should be the permanent standard, no matter which party controls the Senate or occupies the White House.

SOLVING THE CRISIS

The Senate has periodically faced the situation where the minority's right to debate has improperly overwhelmed the majority's right to decide. And we have changed our procedures in a way that preserves the minority's right to debate, and even to filibuster legislation, while solving the crisis at hand.

The Senate's first legislative rules, adopted in 1789, directly reflected majority rule. Rule 8 allowed a simple majority to ''move the previous question'' and proceed to vote on a pending matter. Invoked only three times in 17 years, however, Rule 8 was dropped in the Senate rules revision of 1806, meaning unanimous consent was then necessary to end debate. Dozens of reform efforts during the 19th century tried to rein in the minority's abuse of the right to debate. In 1917, President Woodrow Wilson described what had become of majority rule: ''The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. . . . The only remedy is that the rules of the Senate shall be altered.'' Leadership turned gridlock into reform, and that year the Senate adopted Rule 22, by which ⅔ of Senators present and voting could invoke cloture, or end debate, on a pending measure.

Just as the minority abused the unanimous consent threshold in the 19th century, the minority abused the ⅔ threshold in the 20th century. A resolution to reinstate the previous question rule was introduced, and only narrowly defeated, within a year of Rule 22's adoption. A steady stream of reform attempts followed, and a series of modifications made until the current 60-vote threshold was adopted in 1975. The point is that the Senate has periodically rebalanced the minority's right to debate and the majority's right to decide. Today's crisis, with constitutional as well as political dimensions and affecting all three branches of government, presents an even more compelling case to do so.

These filibusters are an unprecedented shift in the kind, not just the degree, of the minority's tactics. After a full, fair, and vigorous debate on judicial nominations, a simple majority must at some point be able to proceed to a vote. A simple majority can achieve this goal either by actually amending Rule 22 or by sustaining an appropriate parliamentary ruling.

A SIMPLE MAJORITY CAN CHANGE THE RULES

The Senate exercises its constitutional authority to determine its procedural rules either implicitly or explicitly. Once a new Congress begins, operating under existing rules implicitly adopts them ''by acquiescence.'' The Senate explicitly determines its rules by formally amending them, and the procedure depends on its timing. After Rule 22 has been adopted by acquiescence, it requires 67 votes for cloture on a rules change. Before the Senate adopts Rule 22 by acquiescence, however, ordinary parliamentary rules apply and a simple majority can invoke cloture and change Senate rules.

Some object to this conclusion by observing that, because only a portion of its membership changes with each election, the Senate has been called a ''continuing body.'' Yet language reflecting this observation was included in Senate rules only in 1959. The more important, and much older, sense in which the Senate is a continuing body is its ongoing constitutional authority to determine its rules. Rulings by vice presidents of both parties, sitting as the President of the Senate, confirm that each Senate may make that decision for itself, either implicitly by acquiescence or explicitly by amendment. Both conservative and liberal legal scholars, including those who see no constitutional problems with the current filibuster campaign, agree that a simple majority can change Senate rules at the beginning of a new Congress.

A SIMPLE MAJORITY CAN UPHOLD A PARLIAMENTARY RULING

An alternative strategy involves a parliamentary ruling in the context of considering an individual nomination. This approach can be pursued at any time, and would not actually amend Rule 22. The precedent it would set depends on the specific ruling it produces and the facts of the situation in which it arises.

Speculation, often inaccurate, abounds about how this strategy would work. One newspaper, for example, offered a common description that this approach would seek ''a ruling from the Senate parliamentarian that the filibuster of executive nominations is unconstitutional.'' Under long-standing Senate parliamentary precedent, however, the presiding officer does not decide such constitutional questions but submits them to the full Senate, where they are debatable and subject to Rule 22's 60-vote requirement. A filibuster would then prevent solving this filibuster crisis. Should the chair rule in favor of a properly framed non-debatable point of order, Democrats would certainly appeal, but the majority could still sustain the ruling by voting for a non-debatable motion to table the appeal.

Democrats have threatened that, if the majority pursues a deliberate solution to this political and constitutional crisis, they will bring the entire Senate to a screeching halt. Perhaps they see this as way to further escalate the confirmation crisis, as the Senate cannot confirm judicial nominations if it can do nothing at all. No one, however, seriously believes that, if the partisan roles were reversed, Democrats—the ones who once proposed abolishing even legislative filibusters—would hesitate for a moment before changing Senate procedures to facilitate consideration of judicial nominations they favored.

A FAMILIAR FORK IN THE ROAD

The United States Senate is a unique institution. Our rules allowing for extended debate protect the minority's role in the legislative process. We must preserve that role. The current filibuster campaign against judicial nominations, however, is the real attack on Senate tradition and an unprecedented example of placing short-term advantage above longstanding fundamental principles. It is not simply annoying or frustrating, but a new and dangerous kind of obstruction which threatens democracy, the Senate, the judiciary, and even the Constitution itself. As such, it requires a more serious and deliberate solution.

While judicial appointments can be politically contentious and ideologically divisive, the confirmation process must still be handled through a fair process that honors the Constitution and Senate tradition. If the fight is fair and constitutional, let the chips fall where they may. As it has before, the Senate must change its procedures to properly balance majority rule and extended debate. That way, we can vigorously debate judicial nominations and still conduct the people's business.

REMEMBERING REPRESENTATIVE THOMAS LUDLOW ''LUD'' ASHLEY

Mr. BROWN of Ohio. Mr. President, as we search for solutions to our twin challenges in the housing and energy sectors, we should pause to celebrate, remember, and learn from the life of a legislator who brokered solutions to these very same problems more than 30 years ago ''Lud'' Ashley, the distinguished gentlemen who represented the 9th Congressional District of Ohio.

Thomas Ludlow Ashley represented the Toledo area from 1955 until 1981. He was a pragmatic progressive who knew how to broker a deal to move the Nation forward.

He was tapped by the late Speaker Tip O'Neill to lead the effort to develop a bipartisan set of proposals to address the Nation's energy crisis. His work laid the foundation for the passage of a series of bills that aimed to reduce our dependence on oil and spur the research and development of new, clean energy sources.

We could use his advice and counsel today.

Congressman Ashley made a profound difference in the well-being of everyday Americans. He was known as