

AMENDING THE STANDING RULES AND PROCEDURE OF THE SENATE—S. RES. 8, S. RES. 10, S. RES. 21, S. RES. 28, AND S. RES. 29

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the en bloc consideration of the following resolutions, which the clerk will report.

The legislative clerk read the titles of the resolutions as follows:

A resolution (S. Res. 8) amending the Standing Rules of the Senate to provide for cloture to be invoked with less than a three-fifths majority after additional debate;

A resolution (S. Res. 10) to improve the debate and consideration of legislative matters and nominations in the Senate;

A resolution (S. Res. 21) to amend the Standing Rules of the Senate to provide procedures for extended debate;

A resolution (S. Res. 28) to establish as a standing order of the Senate that a Senator publicly disclose a notice of intent to objecting to any measure or matter;

A resolution (S. Res. 29) to permit the waiving of the reading of an amendment if the text and adequate notice are provided.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the clerk begin calling the quorum and that the time be evenly divided for the duration of the consideration of the resolutions. If there are quorum calls during this debate, I ask unanimous consent that the time be equally divided on both sides during those quorum calls.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, it is my understanding that we have more reporting to be done by the clerk on matters that will come before the Senate.

AMENDMENTS NOS. 1 AND 2

The ACTING PRESIDENT pro tempore. Under the previous order, the clerk will report the two amendments that are in order.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. UDALL] proposes an amendment numbered 1 to S. Res. 10; and the Senator from Oregon [Mr. MERKLEY] proposes an amendment numbered 2 to S. Res. 21.

The amendments are as follows:

AMENDMENT NO. 1

(Purpose: In the nature of a substitute.)

Strike all after the resolving clause and insert the following:

SECTION 1. DEBATE ON MOTIONS TO PROCEED.

Rule VIII of the Standing Rules of the Senate is amended by striking paragraph 2 and inserting the following:

"2. Debate on a motion to proceed to the consideration of any matter, and any debat-

able motion or appeal in connection therewith, shall be limited to not more than 2 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees except for a motion to go into executive session to consider a specified item of executive business and a motion to proceed to consider any privileged matter, which shall not be debatable."

SEC. 2. ELIMINATING SECRET HOLDS.

Rule VIII of the Standing Rules of the Senate is amended by inserting at the end the following:

"3. No Senator may object on behalf of another Senator without disclosing the name of that Senator."

SEC. 3. RIGHT TO OFFER AMENDMENTS.

Paragraph 2 of rule XXII of the Standing Rules of the Senate is amended by inserting at the end the following:

"After the filing of a cloture motion under this paragraph but prior to a vote on such motion, the Majority Leader and the Minority Leader may each offer not to exceed 3 amendments identified as leadership amendments if they have been timely filed under this paragraph and are germane to the matter being amended. Debate on a leadership amendment shall be limited to 1 hour equally divided. A leadership amendment may not be divided. A leadership amendment shall require the approval of at least three-fifths of the Senators duly chosen and sworn."

SEC. 4. EXTENDED DEBATE.

Paragraph 2 of rule XXII of the Standing Rules of the Senate is amended—

(1) by designating the first 3 undesignated paragraphs as subparagraphs (a), (b), and (d), respectively;

(2) in subparagraph (d), as designated by paragraph (1), by striking "Thereafter" and inserting "If the Senate agrees to bring debate to a close under subparagraphs (b) or (c), thereafter"; and

(3) by inserting after subparagraph (b), as designated by paragraph (1), the following:

"(c)(1) If the Senate has voted against closing debate on a measure, motion, or other matter under subparagraph (b), but a majority of senators present and voting have voted to bring debate to a close, then the procedures under this subparagraph shall be in order at any time, so long as that measure, motion or other matter has continued as the only pending business subsequent to the vote against closing debate.

"(2) Under the circumstances described in clause (1), it shall be in order for the Majority Leader or his designee to move to bring debate on the pending measure, motion, or other matter to a close on the grounds that no Senator seeks recognition to debate the matter. Immediately after the motion is made and before putting the question thereon, the Presiding Officer shall immediately inquire whether any Senator seeks recognition for the purpose of debating the measure, motion or other matter on which the Senate had previously voted against closing debate under subparagraph (b). If a Senator seeks recognition for that purpose, the Presiding Officer shall announce that the Senate is proceeding under extended debate, and shall recognize a Senator who seeks recognition for debate. After the Presiding Officer's announcement under the preceding sentence the Senate shall continue to proceed under extended debate subject to the conditions provided in clause (3). Notwithstanding rule XIX, Senators may speak more than twice on a question during extended debate.

"(3)(A) If the Senate enters into extended debate under this clause, no dilatory motions, motions to suspend any rule or any part thereof, nor dilatory quorum calls shall be entertained.

"(B) If during extended debate the proceedings described in either subclause (C), (D), or (E) occur and unless the Majority Leader or his designee withdraws the motion made under clause (2), the Senate shall proceed immediately to vote on that motion or to vote at a time designated by the Majority Leader or his designee within the next 4 calendar days of Senate session. When voted on, that motion shall be decided by a majority of Senators chosen and sworn.

"(C) If, at any point during extended debate when no Senator is recognized, no Senator seeks recognition, the Presiding Officer shall renew the inquiry as to whether a Senator seeks recognition and shall recognize a Senator who seeks recognition for the purpose of debate. If no Senator then seeks recognition (or if no Senator sought recognition in response to the Presiding Officer's inquiry under clause (2)), the Senate shall dispose of the motion of the Majority Leader (or his designee) to bring debate to a close pursuant to clause (2), in the manner specified in subclause (B).

"(D)(i) If, at any point during extended debate, a Senator raises a question of the presence of a quorum, the Presiding Officer shall renew the inquiry as to whether a Senator seeks recognition, and shall recognize a Senator who seeks recognition for debate.

"(ii) If no Senator then seeks recognition for debate—

"(I) the Presiding Officer shall direct the Clerk to call the roll;

"(II) upon the establishment of a quorum, the Senate shall dispose of the motion of the Majority Leader (or his designee) to bring debate to a close pursuant to clause (2) in the manner specified in subclause (B); and

"(III) if the Senate adjourns for lack of a quorum and when the Senate next convenes and the morning hour or any period for morning business is expired or is deemed to be expired, the Senate shall dispose of the motion of the Majority Leader (or his designee) made to bring debate to a close pursuant to clause (2) in the manner specified in subclause (B).

"(E)(i) If, at any point during extended debate, a Senator having been recognized moves to adjourn, recess, postpone the pending matter, or proceed to other business, then unless the motion is made or seconded by the Majority Leader or his designee, the Presiding Officer shall renew the inquiry as to whether a Senator seeks recognition, and shall recognize a Senator who seeks recognition for debate, and said motion shall be considered withdrawn. If no Senator then seeks recognition for debate, then the Presiding Officer shall immediately put the question on the motion offered, unless the vote is delayed as provided in subclause (F).

"(ii) If the Senate agrees to a motion to adjourn or recess it shall resume consideration of the pending measure, motion or other matter pending at the time of adjournment or recess when it first takes up business after it next reconvenes, and the Senate shall still be in a period of extended debate. Upon the negative disposition of the motion to adjourn, recess, postpone, or proceed to other business, unless such motion was made by the majority leader or his designee, the Senate shall dispose of the motion of the Majority Leader (or his designee) to bring debate to a close pursuant to clause (2) in the manner specified in subclause (B).

"(F) During a period of extended debate, the Majority Leader or his designee may delay any vote until a designated time within the next 4 calendar days of Senate session, and any votes ordered or occurring thereafter shall likewise be delayed.

"(4) If the motion of the Majority Leader to bring debate to a close pursuant to clause (3)(B) is agreed to by a majority of Senators

chosen and sworn, the Presiding Officer shall announce that extended debate is ended and that the measure, motion, or other matter pending before the Senate shall be the unfinished business to the exclusion of all other business until disposed of and further proceedings on the measure, motion or other matter shall occur in accordance with subparagraph (d). If the Majority Leader withdraws the motion to bring debate to a close pursuant to clause (3)(B) or that motion is not agreed to by a majority of Senators chosen and sworn the Presiding Officer shall announce that extended debate is ended.

“(5) If extended debate on a measure, motion or other matter is ended under this subparagraph, other than by agreement to the motion made by the Majority Leader under clause (4), further consideration of the measure, motion or other matter shall occur as otherwise provided by the rules, except that if the Senate subsequently again votes against closing debate under subparagraph (b), the procedures under this subparagraph shall apply.”.

SEC. 5. POSTCLOTURE DEBATE ON NOMINATIONS.

The second undesignated paragraph of paragraph 2 of rule XXII of the Standing Rules of the Senate is amended by inserting at the end the following: “If the matter on which cloture is invoked is a nomination, the period of time for debate shall be 2 hours.”.

AMENDMENT NO. 2

(Purpose: In the nature of a substitute)

Strike all after the resolving clause and insert the following:

SECTION 1. EXTENDED DEBATE.

Paragraph 2 of rule XXII of the Standing Rules of the Senate is amended—

(1) designating the first 3 undesignated paragraphs as subparagraphs (a), (b), and (d), respectively;

(2) in subparagraph (d), as designated by paragraph (1), by striking “Thereafter” and inserting “If the Senate agrees to bring debate to a close under subparagraphs (b) or (c), thereafter”; and

(3) inserting after subparagraph (b), as designated by paragraph (1), the following:

“(c)(1) If the Senate has voted against closing debate on a measure, motion, or other matter under subparagraph (b), but a majority of senators present and voting have voted to bring debate to a close, then the procedures under this subparagraph shall be in order at any time, so long as that measure, motion or other matter has continued as the only pending business subsequent to the vote against closing debate.

“(2) Under the circumstances described in clause (1), it shall be in order for the Majority Leader or his designee to move to bring debate on the pending measure, motion, or other matter to a close on the grounds that no Senator seeks recognition to debate the matter. Immediately after the motion is made and before putting the question thereon, the Presiding Officer shall immediately inquire whether any Senator seeks recognition for the purpose of debating the measure, motion or other matter on which the Senate had previously voted against closing debate under subparagraph (b). If a Senator seeks recognition for that purpose, the Presiding Officer shall announce that the Senate is proceeding under extended debate, and shall recognize a Senator who seeks recognition for debate. After the Presiding Officer’s announcement under the preceding sentence the Senate shall continue to proceed under extended debate subject to the conditions provided in clause (3). Notwithstanding rule XIX, Senators may speak more than twice on a question during extended debate.

“(3)(A) If the Senate enters into extended debate under this clause, no dilatory mo-

tions, motions to suspend any rule or any part thereof, nor dilatory quorum calls shall be entertained.

“(B) If during extended debate the proceedings described in either subclause (C), (D), or (E) occur and unless the Majority Leader or his designee withdraws the motion made under clause (2), the Senate shall proceed immediately to vote on that motion or to vote at a time designated by the Majority Leader or his designee within the next 4 calendar days of Senate session. When voted on, that motion shall be decided by a majority of Senators chosen and sworn.

“(C) If, at any point during extended debate when no Senator is recognized, no Senator seeks recognition, the Presiding Officer shall renew the inquiry as to whether a Senator seeks recognition and shall recognize a Senator who seeks recognition for the purpose of debate. If no Senator then seeks recognition (or if no Senator sought recognition in response to the Presiding Officer’s inquiry under clause (2)), the Senate shall dispose of the motion of the Majority Leader (or his designee) to bring debate to a close pursuant to clause (2), in the manner specified in subclause (B).

“(D)(i) If, at any point during extended debate, a Senator raises a question of the presence of a quorum, the Presiding Officer shall renew the inquiry as to whether a Senator seeks recognition, and shall recognize a Senator who seeks recognition for debate.

“(ii) If no Senator then seeks recognition for debate—

“(I) the Presiding Officer shall direct the Clerk to call the roll;

“(II) upon the establishment of a quorum, the Senate shall dispose of the motion of the Majority Leader (or his designee) to bring debate to a close pursuant to clause (2) in the manner specified in subclause (B); and

“(III) if the Senate adjourns for lack of a quorum and when the Senate next convenes and the morning hour or any period for morning business is expired or is deemed to be expired, the Senate shall dispose of the motion of the Majority Leader (or his designee) made to bring debate to a close pursuant to clause (2) in the manner specified in subclause (B).

“(E)(i) If, at any point during extended debate, a Senator having been recognized moves to adjourn, recess, postpone the pending matter, or proceed to other business, then unless the motion is made or seconded by the Majority Leader or his designee, the Presiding Officer shall renew the inquiry as to whether a Senator seeks recognition, and shall recognize a Senator who seeks recognition for debate, and said motion shall be considered withdrawn. If no Senator then seeks recognition for debate, then the Presiding Officer shall immediately put the question on the motion offered, unless the vote is delayed as provided in subclause (F).

“(ii) If the Senate agrees to a motion to adjourn or recess it shall resume consideration of the pending measure, motion or other matter pending at the time of adjournment or recess when it first takes up business after it next reconvenes, and the Senate shall still be in a period of extended debate. Upon the negative disposition of the motion to adjourn, recess, postpone, or proceed to other business, unless such motion was made by the majority leader or his designee, the Senate shall dispose of the motion of the Majority Leader (or his designee) to bring debate to a close pursuant to clause (2) in the manner specified in subclause (B).

“(F) During a period of extended debate, the Majority Leader or his designee may delay any vote until a designated time within the next 4 calendar days of Senate session, and any votes ordered or occurring thereafter shall likewise be delayed.

“(4) If the motion of the Majority Leader to bring debate to a close pursuant to clause (3)(B) is agreed to by a majority of Senators chosen and sworn, the Presiding Officer shall announce that extended debate is ended and that the measure, motion, or other matter pending before the Senate shall be the unfinished business to the exclusion of all other business until disposed of and further proceedings on the measure, motion or other matter shall occur in accordance with subparagraph (d). If the Majority Leader withdraws the motion to bring debate to a close pursuant to clause (3)(B) or that motion is not agreed to by a majority of Senators chosen and sworn the Presiding Officer shall announce that extended debate is ended.

“(5) If extended debate on a measure, motion or other matter is ended under this subparagraph, other than by agreement to the motion made by the Majority Leader under clause (4), further consideration of the measure, motion or other matter shall occur as otherwise provided by the rules, except that if the Senate subsequently again votes against closing debate under subparagraph (b), the procedures under this subparagraph shall apply.”.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that the prior order of the Chair be put in place again, that there be a quorum call that would begin now and that the time be charged equally.

The PRESIDING OFFICER (Mr. BROWN of Ohio). Is there objection?

Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. DURBIN). Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent, because of the time delay here, that the recess not start until 1 o’clock rather than 12:30.

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

Mr. REID. I appreciate very much the courtesy of my two friends, the distinguished Senator from New Mexico, Mr. UDALL, and my dear friend from Oregon, Mr. MERKLEY, for being understanding. We had some word changes. We were tied up on words. Senator MCCONNELL had to work that out this morning. We were able to get that done just now. I appreciate that very much. He is always very thoughtful and so easy to work with.

Our ability to debate and deliberate without restraints of time limits is central and unique to the Senate. It is supposed to be that way. It is in our DNA. It is one of the many traits intentionally designed to distinguish this body from the House of Representatives and from every other legislative body in the world. It has always been central to the Senate, and it always should be.

But when that arrangement is abused, we have to do something not merely in the name of efficiency or for the sake of a political party’s fortunes

in the next election, we have to act because when abuses keep us from doing our work, they deter us from working together, and they stop us from working for the American people. And within these four walls, it degrades the relationships that make the Senate run.

What is special about the Senate is that this body operates by consensus. It runs on a fuel made of comity and trust. When abuses happen or when colleagues act in bad faith, it dilutes and degrades that fuel and the Senate stalls.

There are nearly as many opinions on what to do about the Senate as there are Senators. Senators HARKIN, UDALL of New Mexico, and MERKLEY have listened to many ideas and have worked to find solutions. I thank them for their time, efforts, and energy. So have Senators SCHUMER and ALEXANDER. No one has worked harder than they have to find a way out of this crisis, and I admire and appreciate their efforts.

Leader MCCONNELL and I have worked alongside all of them and with each other to find common ground.

In the spirit of compromise that we are trying to restore to the Senate, this is how we have agreed: As to secret holds, we have to get rid of secret holds.

Last year, a single Senator held up 70 nominations. Why? Because of some parochial issue in his State that had nothing to do with what we were trying to do in approving nominations. The standoff finally ended but only after it became public. What he did was within his right, but it was not the right thing to do, and the rule has to be changed.

Senators will no longer be able to hide, and the light of day will shine harder on the Senate as a body. I thank Senators WYDEN, GRASSLEY, and MCCASKILL for their leadership on this subject.

About nominations, we have to recognize that public servants are not political pawns. An appointment by the President to a Federal agency is a great honor. In recent years, it has become a sentence to purgatory.

The Senate no longer efficiently performs our constitutional duty of confirming nominees. That leaves important offices without leaders, leaves important duties unfulfilled, and unfairly leaves in limbo well-qualified nominees.

The Senate is responsible for confirming about 300 nominees to part-time boards and commissions. Every one of these nominees to boards and commissions requires the approval of the Senate. Because of that, the vetting process for these boards and commissions takes an inordinate amount of time. They spend as much time as the FBI does and other people who do the background checks on these part-time jobs as they do someone who is going to become an Assistant Secretary or a judge, and it just eats up time that is unnecessary. There is no reason for Senators to keep them from their posts. But that is exactly what

happens. It is not always the fault of the Senators.

We have to get rid of as many of these nominations as we can, and that is what the Rules Committee leadership is recommending. Senator SCHUMER, the chairman, and Senator ALEXANDER, the ranking member, have come up with something I think is so very important. They are going to help us get rid of about one-third of these nominations, not only these to part-time boards and commissions but others.

This process needs to be changed. We will work to cut by about one-third the number of executive nominations that require the Senate's approval. Senators SCHUMER and ALEXANDER, as I indicated, are the leaders of this issue as far as what we have done to this point.

This legislation will be turned over, and they will be working with Senators LIEBERMAN and COLLINS, who are the chairman and ranking member of the committee of jurisdiction at this stage, to develop legislation that will do what I have outlined.

Third, we cannot afford to waste time for the sake of wasting time. One of the minority's favorite tactics has been to force or threaten to force the clerks to read amendments.

My colleagues will note that I said "one of the minority's favorite tactics has been to force or threaten to force the clerks to read amendments." I did not say "the Republicans' favorite tactic has been to force or threaten to force the clerks to read amendments." We have all threatened to do it. It is wrong, and it has to stop. That is what we are going to do later today.

To have these amendments read is nothing short of showmanship. In this day and age, it is almost always totally unnecessary. In the 18th and 19th centuries, when Senators' offices were their desks—that is all they had; they did not have offices like we have. Their offices were right here on the Senate floor, so hearing a clerk read aloud a bill was probably a more essential—and that is an understatement—part of the debate. Today that is no longer the case.

During the health reform debate two Decembers ago, while snow covered Washington and Christmas neared, opponents of the bill worked hard to delay its inevitable passage.

On a Saturday toward the end of the debate, the minority forced the non-partisan Senate clerks to read the entirety of an important amendment to the bill. The reading started just before 8:30 a.m. and lasted until just before 4 p.m. That is more than 7 hours of time during which nobody listened to the reading of a bill everyone had already studied. It had been filed a long time before, and it was after each Senator had already decided how he or she would vote anyway.

We do not have time for these kinds of gratuitous delays. So the third change we will make is this: If an amendment has already been filed, a Senator cannot force its reading.

Finally, as to what we call around here inside politics, motions to proceed and filling the tree—let me talk a little bit about these two items. I have often expressed my concerns about the procedural hurdle of forcing a preliminary vote simply to determine whether we can have a second vote to determine whether we can debate a bill—the vote called cloture on the motion to proceed. It is another one of the most commonly used tactics deployed simply to frustrate progress and waste time.

Last Congress, we had 26 cloture votes on motions to proceed. Most all of them were bills that were not controversial. We had to hold a vote on whether to hold a vote on whether to debate a bill to promote tourism coming to our country called the Travel Promotion Act. After wasting days of precious time, it passed 90 to 3.

We had to jump through the same hoops before we could vote on extending emergency unemployment benefits, which passed with 87 votes, and before we could vote on letting the FDA regulate tobacco, which passed with 84 votes, and before we could vote on updating our food safety laws for the first time in a century, which passed with 75 percent of the Senate.

Democrats are bothered by how often Republicans have forced procedural votes such as those on cloture on the motion to proceed. I know Republicans are equally frustrated with me for filling the amendment tree on occasion. Their argument is—and they are right—it prevents amendments from being offered.

This agreement Leader MCCONNELL and I have reached is going to clean up a lot of them. Just as I will exercise restraint in using my right as majority leader to fill the amendment tree, he and his Republican conference will curtail their habit of filibustering the motion to proceed. Both practices should be the exception rather than the rule. And starting now, they will be.

I will conclude again expressing my appreciation to those parties who have been so heavily involved in this effort: Senators UDALL, MERKLEY, HARKIN, of course my friend from Tennessee, LAMAR ALEXANDER, and CHUCK SCHUMER.

Especially, I wish to express my appreciation to the Republican leader. As we have said on this floor lots of times, what most all of the American public sees us doing is fighting. We are here arguing on behalf of a Senator on our side or a problem we have on our side. But much of the work done in this body is done by Senator MCCONNELL and myself in my office or his office trying to work through some of these problems. They take a lot of time, and they take our patience and the patience of the entire Senate. That is why I started my remarks this morning telling everyone I appreciate their understanding as we are trying to work out these issues.

We have been working on this effort a long time. These changes are important. I appreciate the attitude of my friend, the Republican leader, in recognizing we have to make some progress.

The changes we will agree to today are, one, secret holds; two, reducing by one-third the number of executive nominations that are subject to Senate delays; three, ending the time-consuming practice of reading aloud amendments that have been publicly available for 3 days; four, limiting the use of filibusters on motions to proceed; and, fifth, filling the amendment tree only when necessary.

I know some want us to go even further. There are just as many arguments for not going too far. But remember this: We are making these changes in the name of compromise, and this agreement itself was constructed with the same respect for mutual concession.

Senator MCCONNELL and I both believe our reverence for this institution must always be more important than our respective political parties. And as part of this compromise, we have agreed I will not force a majority vote to fundamentally change the Senate—that is the so-called constitutional option—and he will not in the future.

The five reforms we are making, however, are very significant. They will move us five steps closer to a healthier Senate—in the minds of many, not far enough; in the minds of some, too far. But that is what the Senate is all about. It is about compromise, consensus building.

Yes, we want the Senate to move deliberately, but if we want it to move we have to find a balance that encourages us to debate but also enables us to legislate. We are governed by a delicate mix of rules, rights, and responsibilities in this body. To that mix, we need to add respect.

The Senate should function as the Founders intended it to function and as the country needs it to function, not simply as slowly as the rules will allow it to function.

The PRESIDING OFFICER (Mrs. HAGAN). The Republican leader.

Mr. MCCONNELL. Madam President, the colloquy which the majority leader and I are working on at the moment will reflect the entirety of our understanding. But with regard to comments about how we got to this place, let me just say, first to my good friend from Nevada, on several occasions I heard both him and the President of the United States talk about how much was accomplished in the last Congress. I am often perplexed as to which was the case. Either an extraordinary amount of legislation was passed and signed or the Senate was obstructing. They could not both be true.

I suspect the real view that most historians will have is that the last Congress passed a great deal of very significant legislation. Then we had a referendum on that November 2, and the American people changed the equation.

Without getting back into that or a litany of complaints by the minority—the Senate has heard them before. The principal complaint the minority has had over the last 2 years is the number of times the tree has been filled and we have been unable to offer amendments. We are all aware of grievances on both sides.

As is often the case in the Senate, we have worked together through Senator ALEXANDER and Senator SCHUMER to come to an agreement as to how the Senate will go forward and the procedures that will be employed. We will have votes later, consistent with the precedents of the Senate, at the thresholds that are required under Senate rules. Then we will move on with the people's business.

I am optimistic that my good friend, the majority leader, and I can convince our colleagues that we ought to get back to operating as the Senate did as recently as 3 or 4 years ago. When bills came up, they were open for amendments, we voted on amendments, and at some point the bill would be completed. I know we can do that. I think it is the right way for the Senate to operate.

I thank my friend, the majority leader, for his leadership in working through this difficult period of rules consideration.

I say to my colleagues in closing that the colloquy which we will have will reflect the entirety of our understanding as to how we go forward. Then we will have the votes later which will give the Senate a chance to go on record about some changes that have been agreed to and some that are being proposed that are not agreed to.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Madam President, first I thank both our leader, HARRY REID, and our minority leader, MITCH MCCONNELL, for their leadership and guidance. They are walking out together, and that is a good metaphor for what has happened today. I thank my colleague, LAMAR ALEXANDER, as well. Under the two leaders' authorization, we talked and, of course, in constant touch with them, worked out this agreement.

I rise to speak in support of the bipartisan agreement on Senate rules reform. It is an important step forward in changing the way we do business in the Senate.

Last year, the Rules Committee held six hearings on the filibuster. We heard about the history of the filibuster and what happened and how it had gone out of control. Those hearings were requested, actually, by a member of the Rules Committee, TOM UDALL, the Senator from New Mexico, and it is why we embarked on the hearings. And I very much appreciate his suggestion that we do that.

At the hearings, Democrats brought up that the majority was no longer able to move forward to consider bills

by filibusters on motions to proceed, and Republicans argued that they were too often blocked from offering amendments by the majority filling the tree. Both sides had legitimate complaints. What couldn't be disputed was that, in many ways, the Senate was broken. It had become harder and harder for the body to consider, debate, and decide on legislation and nominations that it is supposed to take care of.

It is true what Senator MCCONNELL said—that we had a very productive session. But that doesn't gainsay the fact that there were 74 filibusters and that many issues that should have been decided weren't decided, and that the Senate, to many, may not be functioning in the way it used to, with debate being stifled by both the majority and the minority, and so we resolved this.

When I first came to the Senate 12 years ago, a senior Senator pulled me aside and said the role of the majority is to set the agenda. They put bills on the floor and they are debated. And the role of the minority is to offer amendments to change the legislation. We are not doing that much anymore. What usually happens is we offer a bill, and the minority says, we don't want it. They may say, we don't want it because Democrats have refused to allow unlimited amendments; whereas we think they do not want it because they may just want to gum up the Senate. But whatever the reason, both sides have legitimate complaints here and we are trying to resolve some of those. So clearly, the time for change has come. I believe the reforms we are adopting today give us a very good chance to go back to the way of operating where we had real debate on bills and amendments and votes on bills and amendments.

This won't happen overnight, and both sides will still use the procedural tools available to them on the most important issues. But we hope it will work well enough to get us back on track. Leaders REID and MCCONNELL in the colloquy they will put forward—which Senator ALEXANDER and I participated in framing—will do two things, in addition to the changes that we will make. One, each will say we should use the motion to proceed to block bills from coming to the floor infrequently, and the majority will say we should use filling the tree to block amendments that might come forward on those bills infrequently.

Obviously, we are going to have to watch to see how this works over the next several months. And, obviously, there will be times when each side decides they have to use the right that the Senate gives them to block things. But the presumption will be that in the usual course of business we will not do that; that they will be the exception, not the rule.

A second thing that will be stated by both leaders is whoever is in the majority next Congress will not try to change the rules by simple majority in

this Congress or next. Some on our side were worried if we didn't try to invoke the constitutional option, should the other side get the majority—and I don't personally think we have to worry about that or that it will happen anyway, but should that happen, then they might invoke it and do something else, so why not do it now? Well, both leaders have agreed they will not do that. Without leader support, it is virtually impossible for it to get done.

So that is a significant change, and when the colloquy is presented in the RECORD, we will see both leaders have agreed to that. I want to thank them for providing strong leadership and guidance throughout this process.

I became convinced, working with my good friend, the Senator from Tennessee, and having plenty of conversations with my friend and Leader HARRY REID, and a few with Senator MCCONNELL, that everybody wanted to come to an agreement here. Everyone wanted to see the Senate work better, and that made me feel pretty good regarding what we did here.

Second, I want to recognize the many Senators from my party who worked tirelessly to identify the momentum for change, and at the head of the list, of course, are TOM UDALL, JEFF MERKLEY, and TOM HARKIN. They worked very hard on these issues. Two of them are newer in the Senate—freshmen—and one has much more experience than I do in the Senate, Senator HARKIN, and they all worked hard to see that we changed the rules.

While the changes aren't everything they would have liked or I would have liked, certainly the changes we are getting, not insignificant at all, are because TOM UDALL started pushing this idea when he got here to the Senate. I think his predecessor, Clinton Anderson, had done some of this, and JEFF MERKLEY and TOM HARKIN joined in the cause early on and actually brought us to the point where the inertia of not doing anything would no longer govern and we would get together to get something done.

There were other Senators who played a very important role: Senator LAUTENBERG, with his proposals; MICHAEL BENNET, MARK UDALL, and AL FRANKEN all had proposals and all played a very significant role here and can feel very good about the changes we have wrought.

I particularly want to thank Senator KLOBUCHAR for leading the working group of Senators who spent hours reviewing and refining. Without all of them, I don't think the agreement would have been possible.

I would make one other point, and this is a disappointment to me, so I will make it for myself. One idea championed by the reform-minded Senators I thought made eminent sense is the talking filibuster. It didn't change the balance in the Senate, it simply said that if you were going to filibuster, you had to stay on the floor and talk. You couldn't just be there and object.

The American public understands when a Senator wants to filibuster a bill, that Senator should be required to stand up and talk on the Senate floor. I strongly support the talking filibuster. We sometimes call it the Jimmy Stewart talking filibuster, because everyone recognizes that from the movie. I believe it would pull back the curtain on the kind of filibusters we have now. We wouldn't change the rule of 60, but the filibustering Senator and his supporters right now don't even have to show up or talk for a vote. This talking filibuster is one change I hope the Senate will adopt in the future because it makes good sense and we should do it.

I don't believe we should eliminate the filibuster altogether, but we need to make it real. The talking filibuster proposals would do that, and I hope someday we will make the talking filibuster part of the Senate rules, and I will vote for that resolution that will be on the floor later today. Of course, it will need two-thirds to pass.

Finally, I want to thank Senator ALEXANDER. He and I have been friends before this, but we worked together being here throughout the holidays, vacations, and recesses, and he was creative, he was flexible, as always, he was congenial and, as usual, he was smart. His concern for this institution helped bring the minority and the majority together, and I very much appreciate Senator ALEXANDER's role.

Senator REID outlined the other parts of the bipartisan proposal—the end to secret holds, which will be done by rule; the end of reading of amendments filed for at least 72 hours, also done by rule; and the third proposal is to limit the number of executive nominations—there are so many. About 30 percent of the total we propose to eliminate. He and I, and Senators LIEBERMAN and COLLINS, who have the jurisdiction in their committee, will introduce a bill that we hope to move quickly. We have gotten the agreement from the House that they will move the bill, and we should eliminate confirmation on so many of these positions that shouldn't require confirmation, such as members of part-time boards and commissions, officials who handle legislative or public affairs, and things such as that, and I want to thank Senators LIEBERMAN and COLLINS for that.

Finally, as chairman of the Rules Committee, I believe there is more we can do. I want to see our efforts at reform continue. I wish to continue working on the streamlining of confirmation of nominations, both executive and judicial, and our Rules Committee will continue to look at that.

Change doesn't come often or easily to the Senate, but we are here because many Members worked hard on reform, and both parties, continuing the feeling of bipartisanship that began in the lameduck and I think has continued through the State of the Union speech, are continuing again today. I hope our efforts will make a difference. I hope

the Senate will function better, and I am very hopeful that with these changes, both formal and informal, they will.

We know there are still sharp differences within our body on issues, and those won't disappear. On certain bills, both sides will use every procedural tactic that makes the Senate a different body than the House, but hopefully, on most, we won't.

In conclusion, while those of us who wanted reform in the Senate didn't get everything we wanted, the Senate will be a significantly better place for the changes we are enacting. As a result of this agreement, there should be more debate, more votes, fewer items blocked by a single Senator or small minority of Senators. Make no mistake about it, this agreement is not a panacea, but it is a very significant step on the road to making the Senate function in a better, fairer way.

Again, I thank all of my colleagues who participated in this effort.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I wish to thank the Senator from New York, the Senators from New Mexico and Oregon, and Senator HARKIN of Iowa for their efforts—some over many years—to achieve two goals: to help make the Senate a place that is better able to deal with the serious business that comes before us, and second, to preserve the Senate as a unique forum—unique in the world, really—as a legislative body that protects minority rights.

This is an important step forward—the reform of the Senate—but the reform the Senate needs is a change in behavior, not in its rules. These rules move us in the right direction, but the behavior that the Senator from New York spoke about and that the majority leader and the minority leader spoke about is what, in the end, will make the most difference.

I have talked with many Senators on both sides of the aisle. We have done a lot of talking both on the floor here and off the floor about where the Senate is today, and a great many of us feel the Senate is a shadow of its former self in terms of its ability to function as a truly deliberative body.

It is hard to see how the majority can complain after a legislative session where they passed health care legislation, financial reform legislation, and other legislation that may have even resulted in the diminishing of their numbers. They had a productive session, from their point of view. But the truth is, on both sides of the aisle—on both sides of the aisle—we wish to see the Senate function in a different way.

The majority leader and the Republican leader have put out in a colloquy what that way is, and that will govern what we do. But basically, I believe it is this: We want the same thing—a Senate where most bills are considered by committee, where most bills come to the floor as a result of bipartisan cooperation, where most bills are then

debated and amended and then voted upon.

To someone who may have just tuned into the Senate, they may say: Well, that is a very simple solution. I thought that is what the Senate was supposed to be. It is what the Senate is supposed to be. It wasn't so long ago that it was the standard operating procedure. Senator McCONNELL said it was just a few years ago. He and Senator REID have both been here a number of years.

I remember watching the Senate—and I have mentioned this before in this debate—between 1977 and 1985, when Howard Baker of Tennessee and Robert Byrd of West Virginia were the Republican and Democratic leaders. I had worked for Senator Baker before that as a legislative assistant. I knew Senator Byrd. Here is what went on then, and here is what could go on today: Most pieces of legislation that came to the floor started in committee. That gave us a chance to see what they did and to improve them and to hear from voices from all over the country. That legislation then came to the floor.

During Senator Baker's day, when he was the majority leader, he would rarely bring a bill to the floor unless both the Republican chairman and the Democratic ranking member supported it because he didn't want to waste the Senate's time. He knew that the Senate's 60-vote requirement forces consensus.

People talk about the filibuster. But what we have is a requirement that most important bills get 60 votes. If you are sitting with 53 Democrats and 47 Republicans, you don't have to have an advanced degree in mathematics to figure out if you don't have some Democrats and some Republicans, you don't get to 60.

So Senator Baker was saying back in the 1980s, bring the bill to the floor if it has the Republican chairman and the Democratic ranking member's support. Then the call would go out for amendments, and sometimes there would be 300 amendments filed.

The Senator from North Carolina or Tennessee might file 40. And no one said: Whoa, stop. You cannot do that. Instead, they said: Bring them on in. Sometimes there would be 300 amendments. Then Senator Baker or Senator Byrd would ask for unanimous consent to close off amendments. Well, I guess because the Senators by that time were exhausted from writing amendments, they all agreed to it, and then they started voting.

Now, it got to be Wednesday or Thursday, and the party secretaries would go to the Senators and they would say: I notice you still have 30 amendments waiting. Maybe you would only like to offer 15. It might get to Friday, and they would say: I notice you have five left. Maybe you would only like to have one. But if they had one they wanted to get, they almost always got the amendment. That is what

the real importance of this agreement is today.

The difference of opinion we have had that has caused us to degenerate, in some cases, to a body that has not functioned as well as it should has been because on that side of the aisle—the majority—people did not want to vote. It is like joining the Grand Ole Opry and saying: I do not want to sing. Some Republican Senator might offer an amendment that side does not want to vote on, and they say, well, we do not want to vote or they say, well, we do not want to work on Friday. So they go home. And they put pressure on the majority leader to use a procedure called filling the tree which cuts off votes and the right to amend. The majority leader used that power to cut off all amendments and debate 44 times. That's more than the last 6 majority leaders combined. Then what happens over here? Well, then Republican Senators, now in the minority, say: Well, we are not going to get amendments; we are going to start objecting. So we have what is called a lot of filibusters. We say: You are counting filibusters when you cut off our right to offer amendments. They say: You guys over there are keeping us from doing our business. On both sides, there is some truth to what has been said.

So I think most Senators are happy with this result. I think they will be. I hope it works. I mean, the idea would be that the leaders will do their best to see that most bills go to committee, come to the floor, and that when they do, if the Senator from North Carolina has an amendment the Senator from Tennessee would rather not vote on, she offers it anyway if she wants to, or if I have one she would rather not vote on, I may offer it anyway because it is important to the people of my State, even though we might be in a political minority at the moment. I believe that in most cases, if most Senators in the minority have that opportunity, that will help us get back to the kind of Senate we want to see.

I wish to compliment Senator UDALL, Senator MERKLEY, and Senator HARKIN. I learned a long time ago in life that if you start out in one direction, you do not always get exactly where you want to go, but you do not get anywhere if you do not start out. I think what they have done with their intelligence and diligence and persistence in this has created a period of time here where the Senate is taking some steps today that will help the people of this country know that serious issues—and we have plenty of them—the debt, for example, where 42 cents out of every dollar we spend is borrowed; jobs, for example, and in my State we have had 24 months of 9-percent unemployment or higher—these changes will help us deal better with those issues. I will have more opportunity to talk about those after lunch later this afternoon. I want my friends on the other side to have a chance to make their points before we adjourn or take a recess for an hour.

Fundamentally, the steps we are taking make a difference. The one I am especially glad to see is the effort to make it easier for a President—any President—to staff his or her government. One of the problems—and Senator REID talked about it—is we confirm too many people. It is not necessary for us to confirm the PR officer for a minor department. There is no need for that. The Secretary needs to go ahead and be able to appoint that person. We need to be able to work on more important issues.

Secondly, we have created a phenomenon in this town that I refer to as “innocent until nominated.” We have created a situation where any citizen who is invited by the President to serve in his government has to run such a gauntlet that it is almost impossible to get to the end of the gauntlet without being branded as a criminal. The reason is, we have a maze of conflicting forms in the executive branch, plus an IRS audit, and a maze of conflicting forms in the Senate. It not only delays, but it traps people and it tricks people into filling out one definition of “income” here and another one there. We all know this is true. We all know it needs to be fixed.

We have tried to fix it before—not just some of us; the majority leader and the Republican leader tried to fix it, and they didn't get it done. Senator LIEBERMAN and Senator COLLINS tried to fix it, and they could not get it done. And 2 years ago, at a bipartisan breakfast which Senator LIEBERMAN and I hosted, we had a whole group of us who said: Let's try to get this done. We talked to President Obama's administration about it. They said: Sure, go ahead. We would like to see that happen, either for us or for the next President. But we could not get it done because of resistance in this body to giving up any sort of power.

Right now, we have a unique confluence of support for the idea of making it easier for any President to staff his or her government. The majority leader and the Republican leader are solidly behind the effort. Senator LIEBERMAN and Senator COLLINS are solidly behind the effort. Senator SCHUMER and I are working on a bill to do that, and we hope we can succeed. This opportunity, this window would not have happened if it had not been for the work of the Senators who have been arguing for reforms.

The other step we are likely to take is abolishing the secret hold. I think that is a good idea. I speak from experience. When I was nominated by the first President Bush to be Education Secretary, a Senator put a hold on my name, and it took 3 months to get it off. I finally found out who it was. I never knew exactly why he did it or why he took it off, but it might have helped if I had known it a little earlier. So I think it is a good idea. The majority leader put a hold on one of my TVA nominees, but he did it publicly. So I put a hold on one of his nominees, and

I did it publicly. And we worked it out. So there is nothing wrong with asserting our rights, but we might as well do it in public. I congratulate the Senators for making that effort. Senator WYDEN and Senator GRASSLEY have been working for more than a decade on that, as well as other Senators.

The step that says that if an amendment has been filed and on the Internet for 72 hours, we cannot require the clerks to read it all night long—that is a very commonsense proposal. I know it will be greatly appreciated by the employees of the Senate who have the job of reading the amendment. If they had a chance to vote, this would probably be the resolution on which they would like to have a chance to vote yes.

So these are important steps in the right direction which we will have a chance to talk about more today as the debate goes on. But I would like to end where I began. What we need most in the Senate is a change in behavior in addition to this change in rules. We need to preserve the Senate as a forum for minority rights. We need to preserve the 60-vote requirement for major votes. That will force consensus. That will cause us to work together. That will build support out in the country for the result of what we do because they can see that both Republicans and Democrats think, for example, that the way we have gone about trying to make Social Security solvent is a good way, rather than one side or the other just jamming through their partisan way.

There is a reason it is a good idea for this not to be a body that operates by a simply majority as the House does. I mean, the House can repeal the health care bill overnight. Bring it over to the Senate, and that side says: Let's stop and think about it. The House, if it is Democratic, can repeal the secret ballot in union elections overnight, and it did with its vote in the last Congress. But when it came over here, the Republican side said: Let's stop and think about it. The American people are better served by having these two different kinds of bodies, and the Senate and the American people will be better served both by the rules changes we are likely to adopt this afternoon and especially by the agreement by the majority leader and the Republican leader, which I feel confident has the backing of almost all of us, that we would like to work in a Senate where most bills are considered by committee, where most bills come to the floor, and where Senators, most of the time, have an opportunity to offer their amendments and debate. To be sure, there will be times when, if it is repeal of health care, that side does everything it can to exercise its rights to stop it, or if it is repeal of the secret ballot in union elections, this side will do everything we can to exercise our rights to stop it. But that will not be the ordinary course of events if this works the way we hope it does.

So I hope my friends on the other side feel good about what they have done. They have not achieved everything they sought to achieve, but we rarely ever do, particularly in a body of 100 that operates by consent of 100. What they have done, I believe, in addition to the rules changes we are likely to adopt, is create a window in which we have had a good, open discussion about the kind of place we want to work, the kind of Senate we hope would serve the American people the best, and we have come to a consensus about a change in behavior, which I believe in the end will be more important than the change in the rules.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL of New Mexico. Madam President, before Senator ALEXANDER leaves, and I know we have our conferences, and I guess we are going to go to about 1:00 today, I would like to thank him for all of his efforts. I really look forward to Senator ALEXANDER being the ranking member—I believe he is going to be the ranking member—on the Rules Committee now that Bob Bennett has moved on to other things. He has participated in many of these hearings. I look forward to continuing the exchange on rules that we have had. I do not think this is the end of the rules debate. I think that is why we have a full-time Rules Committee to take a look at this.

I hope these new Senators who are listening to us today—whom you are going to talk to on your side, I am sure, in about 15 minutes—that they look at our rules and offer suggestions and that we still continue this discussion in the Rules Committee.

I thank all of the leaders who came down here today and talked.

Senator REID and Senator MCCONNELL have announced an agreement. We are moving forward with reforms.

Senator SCHUMER has been a real champion on rules reform. I remember going to him and asking for hearings, and he said: Well, what kinds of hearings are we looking at? What do we want to do? And I explained to him, went through—we need to talk about the history of the filibuster. You know, the filibuster was not in the original Senate. There were rules for 17 years where you had what was called a motion to order the previous question. That is a majority motion to cut off debate. And then later it was changed. So I said: We have to get the history out there for everybody to see because some of these charges are not very accurate. And he was a champion. He allowed us to do six hearings. We brought in constitutional scholars. Both sides participated, and it was very productive.

So here we are at the beginning of a Congress, and we have been pressing—with my good colleague and friend from Oregon—for rules reform through the Constitution, relying on the Constitution. In article I, section 5 of the

Constitution, it gives us the power and the authority—a majority of us at the beginning of an organizing session—to determine what rules we function under for the next 2 years. That is the exercise in which we have been engaged.

Both the Senator from Oregon and I realize if we hadn't utilized our rights under the Constitution, if we hadn't pushed this very hard and said we are trying to round up 51 Senators who will stand with us and say they want change in this institution, we want to get back to being the greatest deliberative body, we want to consider all the important bills in a timely way—budget bills, appropriations bills—by utilizing our constitutional option or our rights under the Constitution, we have come a long way in 1 year. We have had many debates in our caucus. We have had many discussions.

We are not exactly where the Senator and I think we should be at this particular point in time. These reforms—and let me say, these reforms are steps forward and in some ways significant. The fact that we are getting rid of secret holds, if we have that vote today and get 60 votes, is a good thing. Nominations, letting the President get his team in place, that is a good thing. Reading of amendments, my cousin, Senator MARK UDALL, is involved in that. The motion to proceed, the gentlemen's agreement on the motion to proceed and filling the tree, that is a significant step in behavior to say: Let's change our behavior, and then the fact that we will have votes today on S. Res. 10, on the Merkley talking filibuster and the Harkin proposal, these are significant votes to be taken and significant steps forward.

I strongly disagree with one thing announced here, the idea that the two leaders are taking off the table us utilizing our constitutional rights. That was what was announced. I think we both heard it the same way. Leader MCCONNELL and Leader REID both said they are not going to rely on a majority vote for rules in the future, no matter who is in power and what is happening.

The beauty of the Constitution—and we all realize this—is that is a good agreement for them. It doesn't apply to 98 other Senators. Each Senator under the Constitution has his or her right to rely on those constitutional rights. I urge, as has been done every time in the past when we have had a movement for change on rules, that it be bipartisan. We are seeking 51 Senators who will join with us. Because if 51 Senators join at the beginning of a Congress and say they want rules reform, they want this place to function better, they want to do the people's work better, they want to take up some House bills, the 400 bills that died, they want to do appropriations bills in a timely way—all these things are very important to a better functioning Senate, and a better functioning Senate is all about the people's work.

I know the Senator from Oregon has some initial comments. But I thought we could talk about the idea that we have moved a long way. We have pushed the constitutional option. I don't think there is any doubt that he and I are giving up on our constitutional rights. Other Senators can say what they want to do, but we are going to stand and utilize our rights as we move down the road. We are hoping we will be at a place where we have 51 Senators, Democrats and Republicans, who will continue to look at this and find a better way to make this institution work in terms of modern issues, modern times. I think we are kind of stuck back in another century with some of these rules. We need to bring it up to date.

With that, the Senator from Oregon and I are going to engage in a colloquy, but I know he had some additional comments. I am happy to yield.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Madam President, I thank my colleague from New Mexico for his leadership on the constitutional option. Some may ponder how it is that we have come to have this constitutional argument at this moment. As he has noted, under the Constitution, this body is empowered to organize itself. That is not that those who spoke 100 years ago or 50 years ago get to tell us how to operate but that we today in this Chamber have the power of the Constitution to organize ourselves. There is little question from constitutional scholars about this understanding of the very plain words written by our forefathers as they designed this institution. Indeed, they were clear, when supermajority requirements were set—supermajority for overriding a Presidential veto, supermajority for impeachment, supermajority for treaties—but a simple majority to pass bills, a simple majority to pass amendments, a simple majority to adopt the rules by which we function. Indeed, that is exactly what the first Congress did. They used a simple majority to adopt their rules, and they extended to each other a courtesy to hear each other out, those 26 Senators coming from 13 States. They heard each other out so they could make better decisions.

Over time that courtesy has grown to be informally entrenched in a Senate rule that says shutting down debate takes a supermajority. But when that was done, it went hand in hand with a social contract to understand that such power for one Senator to shut down this body—to require a supermajority, delay action for a week—would be a power rarely used, a power used in courtesy and respect to other Members, that it would only be used for the most important issues, the highest issues of concern to one's particular State or to the future of the Nation. That social contract is what has disappeared that went hand in hand with the rule, with the supermajority.

Let me display a simple chart that shows the deterioration of that social contract. Here we are with the average number of cloture motions—that is, to shut down debate—filed. The average from 1900 to 1970 on was one per year. In the 1970s, it went to 16. We can see how this grows over time until in the 1990s we were at 36, in the 2000s at 48, and these last 2 years, 68 per year. This is the change from the courtesy of hearing each other out to using a supermajority as an instrument of legislative destruction to blockade a good debate, to blockade the will of the majority, to blockade and paralyze the Senate as a whole.

Recognizing this damage that meant that no appropriations bills were adopted last year, that no budget was adopted, that 400 House bills lay collecting dust on the floor rather than being processed and voted on, that more than 100 nominations were never acted on and that we failed in our constitutional duty to advise and consent, it is in recognizing all that—it was particularly apparent as new Members of the Senate observing this—that something had to be done. That is why I was so impressed when the Senator from New Mexico stepped forward and said: We will use the power of the Constitution to help restore the broken Senate. It has been a privilege and an honor to team up with him and to team up with many Members in this effort.

We come to this point today where, as my colleague mentioned, there are a number of steps forward coming out of this debate. They are modest steps forward. Some of them are ones that have been debated for years. I applaud Senator WYDEN from my State, who worked with Senator GRASSLEY and Senator McCASKILL on secret holds. As Senator WYDEN likes to note, for 15 years he has argued we should not be able to put a hold on legislation without taking public responsibility, literally since he came to the Senate. He is absolutely right. Today, I think a supermajority will adopt that.

These other steps—not abusing the reading of amendments, reducing the number of folks subject to confirmation—are steps forward.

But I would like Members to envision three 60-foot-high walls between where they are now and where they need to be to have the Senate work as a body that debates legislation and votes on legislation. The first 60-foot wall is cloture on the motion to proceed. The next 60-foot wall is cloture on an amendment. Actually, there can be any number of those. The third 60-foot wall is final passage, closing down debate for final passage. In this agreement today, there has been a sense between the leaders that the motion to proceed will not be filibustered. That is the first wall. That is being taken down or at least a commitment not to use it except in extraordinary circumstances. But that means there are two more major walls left in place.

I step back from that and ask: How much will it change for the Senate? If

I go back to this chart, the first wall is one that has only been occasionally used. It is the second and third walls that are driving the paralysis of the Senate.

I hope, indeed, that when the majority and minority leader talk about changing behavior, when my good friend from Tennessee, Senator ALEXANDER, talks about changing behavior, I hope they are talking about restoring the social contract, that the filibuster would rarely be used. That would be a tremendous step forward. I will hold out that promise.

Meanwhile, recognizing that it will only happen when a Senator comes forward and does a frivolous effort to continue debate on an amendment or a bill or a nomination that is overwhelmingly supported, that it will be up to leadership to say that is not acceptable. We need to restore the social contract. If that change in behavior happens, that would be a tremendous step.

Meanwhile, I echo the comments of my colleague. I cannot surrender the rights under the Constitution to use a majority to continue to pursue rules that will make our broken Senate work better. I reserve that right, as does he.

There are many who say the Senate should be different than the House, that it should be a cooling saucer. That was related to the debate in the design of the Constitution, when terms were staggered so one-third is elected every 2 years. The country may be way over here and the Senate may change accordingly, but only one-third is up for election. Then, maybe over here the Senate changes less. In addition, this courtesy, this respect of hearing each other out and pondering the arguments of each other. But a cooling saucer is very different than the routine use of the filibuster to obstruct the ability to act, very different than the way it has been used these last 2 years to prevent us from doing appropriations bills, from doing House bills, preventing nominations from being considered. That has to end. That has to change.

I pledge myself to continue working, hoping that behavior will change on its own but working with others to say, when it doesn't change, we need to change, we need to change the rules to make this institution fulfill its constitutional responsibilities.

We will be breaking soon. When we come back, I hope to resume a conversation about some of the specific items we will be voting on later today. The one I particularly wish to talk about is Jimmy Stewart or the talking filibuster. It is a compromise that takes into account the desire that we hear each other out, the desire that we be a cooling saucer but prevents an opportunity to be accountable to the public, not to have the silent or secret filibuster we have now but to have the public and talking filibuster, where we actually debate. I will say more about that when we come back.

I close by thanking all those who have been in this conversation, certainly LAMAR ALEXANDER from the Republican Party and CHUCK SCHUMER, who have been working on rules to hold hearings to craft the structure for our leadership, our majority leader HARRY REID and our minority leader MITCH MCCONNELL, who have been in this conversation that has resulted in these steps forward that we are taking today. I applaud all the Members who have said that as Senators sworn to uphold the Constitution, they have an obligation to make the Senate a great deliberative body, something it once was, something it is not now but something that is in our hands to make happen again.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 1:01 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. SANDERS).

AMENDING THE STANDING RULES AND PROCEDURE OF THE SENATE—S. RES. 8, S. RES. 10, S. RES. 21, S. RES. 28, AND S. RES. 29—Continued

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I call up S. Res. 28, the Wyden-Grassley-McCaskill resolution to end secret holds.

The PRESIDING OFFICER. The resolution is pending.

Mr. WYDEN. Mr. President, with the passage of this resolution, no longer will it be possible for a Senator to engage in the unconscionable practice of secretly blocking a piece of legislation that affects millions and millions of Americans.

The fight for more sunshine in the way the Senate does business feels like it has been the longest running battle since the Trojan War. Today, after scores of battles, the cause of open government is going to prevail.

Over the years, Senator GRASSLEY and I, with the strong support of Senator MCCASKILL, have been able to secure leadership agreements to end secrecy. We have been able to pass amendments to end secrecy and send them to conference committees—where they would then magically disappear. We actually, at one time, got a watered-down version of our law passed. In each case, the defenders of secrecy have found a way to keep sunshine out and obstruct the public interest. When this proposal passes, we believe there will be real change.

There are three reasons why we believe our bipartisan proposal to end secret holds will be different from previous approaches.

First, now with any hold here in the Senate, there would be a public owner.

Every single hold would have a Senator who is going to be held accountable for blocking a piece of legislation.

Second, there will be consequences. In the past, there have never been any consequences for the Senator who objected anonymously. In fact, the individuals who objected would usually send somebody else out to do their objecting for them, and they would be completely anonymous. Essentially, the person who would be doing the objecting would sort of say: I am not involved here. I am doing it for somebody else. So the entire Senate lacked transparency with respect to who was actually responsible.

Third, the Wyden-Grassley-McCaskill proposal would deal with all holds, whether they reach the point of an objection on the floor or are objected to when the bill or nomination is hotlined. Our approach requires objections to a hotline be publicly disclosed, even for bills or nominations that never get called up on the floor. This is a particularly important provision.

Senator GRASSLEY and Senator MCCASKILL feel very strongly about this as well because most holds never reach the point that there is an objection on the floor, and that is something I think has been lacking in this debate. They hear about discussions of people objecting on the floor. Most holds never reach that point. Typically, what happens is, a Senator who objects to a bill or nomination tells the Senator's leader that the matter should not be allowed to come up for a vote, and then the leader objects to bringing up the bill when it is hotlined. Because of that objection, the bill or nomination never actually gets called up on the floor. That type of hold effectively kills the bill or nomination long before it gets to the point of an objection on the floor. So we want to make it clear this is an important distinction and, for the first time, we would not just be talking about objections that are made on the floor.

I see my friend and colleague, Senator MCCASKILL, who has crusaded relentlessly for this. Senator GRASSLEY and I—I say to Senator MCCASKILL we sort of feel like we have been at it as part of the longest running battle since the Trojan War. I say to the Senator, your energy has been absolutely crucial in this fight.

I would also point out—and I think we know—the defenders of secrecy will always try to find a way around anything that passes. We think we have plugged the holes. We think we finally made the crucial differences. But the fact that the Senator has been such a relentless watchdog for the public interest, an opponent of secrecy, has been a tremendous contribution. I thank my colleague from Missouri and welcome her remarks.

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, very briefly, I am proud to join Senator GRASSLEY and Senator WYDEN in their

long crusade on this issue. I am giddy, frankly. I cannot believe it. I cannot believe we are this close to amending the Senate rules by a wide margin. I will predict this will be a very lopsided vote, which is ironic. I do not think there has ever been anything that has taken as long as this has that is going to win by as big a margin as this is going to win because people were stubborn about holding on to their secrecy. It is a lot easier to do business, a lot easier to get your deals if you do not have to be public about it.

So there are very few things that you can grab a hold of in the Senate and actually see to the finish line, and I believe this will be the finish line. But let me say one warning. If anyone thinks they can figure out a way around this, all of us who have worked on this are not going to give up. So 6 months from now, if something is not moving and no one knows why and we figure out that one person has decided to own the holds, such as the minority leader—I will just own all the holds—that is not going to work, because we will come right back and we will point out to the American public: Believe it or not, they are trying to get around this rule.

So a warning to everyone: If we are going to amend the rule, be prepared to live by it because it is the right thing to do. I think our stock will rise with the American people. I think the transparency is essential.

I am very proud that it appears—I will keep my fingers and toes crossed because it has not happened yet—we have bipartisan agreement that this nonsense is going to end.

I wish to thank my colleague from Tennessee, Senator ALEXANDER, because I think he has been essential in these negotiations as it has related to an amending of the rules as it relates to the secret holds.

Thank you, Mr. President. I yield the floor.

Mr. WYDEN. Mr. President, I thank our colleague, our invaluable ally in this fight.

Senator GRASSLEY, I believe, is on his way. But the Senator from Tennessee has had many discussions on this topic with me and other Senators, and I wish to thank him for all the time and effort he has put into it. I yield him whatever time he would like.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, Senator GRASSLEY and Senator WYDEN and more recently Senator MCCASKILL, have pointed out the obvious fact that so-called holds that Members of the Senate place on nominations or legislation should be public. I think that is a good idea. That has bipartisan support. I believe today we will change the rules to make that clear, and I congratulate Senators WYDEN, GRASSLEY, and MCCASKILL for their perseverance and persistence in pushing this ahead.