

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BARRASSO. I ask unanimous consent that the order for the quorum call be rescinded.

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

ADVICE AND CONSENT

Mr. BARRASSO. Mr. President, I come to the floor today to talk about the advice and consent duties of the Senate. Our Constitution gives the Senate the responsibility to advise the President on high-level executive positions and judgeships. The Senate is also asked to consent on those appointments to ensure that only those who are worthy of the public's trust hold positions of such great power. The confirmation process is a way to protect the American people from nominees who simply aren't up to the job or to the times we are in as a country.

It is also an important opportunity for the Senate to exercise oversight over the agencies and the policies of an administration and to do this on behalf of the American people. Let me repeat that. It is about exercising oversight on behalf of the American people.

This is one of the most important roles we play as Senators. This is one of the reasons our Nation's Founding Fathers intentionally made the pace of the Senate deliberate. They wanted to make sure there was free debate on important subjects so we could give appropriate consideration to policies, to laws, and to nominations.

The Father of our Constitution, James Madison, explained the Senate's role was "first to protect the people against their rulers."

"First to protect the people against their rulers" was the point of this body. That is why, over its long history, the Senate has adopted rules that provide strong protections for political minorities.

Lately some in the majority have decided the American people shouldn't ask so many questions and the minority shouldn't have so many rights. Here is a little perspective on the conversation we are having today. Over the last 6 years Majority Leader REID has taken an unprecedented stand against the rights of the minority in this body. He has done it through procedural tactics such as filling the amendment tree on bills and bypassing committees using something called rule XIV of the Senate rules. Those techniques may make it easier for the majority leader to get what he wants, but they shut many Senators out of legislating, and they shut out the Americans we represent, Democrats as well as Republicans.

At the beginning of the last Congress and again at the start of this Congress, there was an attempt to use the so-called nuclear option and to use it to radically change the rules of the Sen-

ate and to strip the rights of the minority. Back in 2011, Majority Leader REID made a commitment not to use the nuclear option.

On the floor he said:

I agree that the proper way to change Senate rules is through the procedures established in those rules, and I will oppose any effort in this Congress or the next to change the Senate rules other than through the regular order.

He said this Congress or the next Congress, so that includes the Congress we are in right now today.

It didn't stop some of the members of his caucus from trying to force the nuclear option again earlier this year. I was one of a bipartisan group of Senators—eight of us—who worked together and negotiated, I thought, responsible changes to Senate procedures. Our goal was to avoid the rush that would take drastic steps that would damage this body and our country forever. It was a fair agreement.

It was also an agreement that we were told would rule out the use of the nuclear option. So Republicans agreed to support two new standing orders and two new standing rules of the Senate. Those changes were overwhelmingly supported by Republicans as well as Democrats in this body.

In return, the majority leader again gave his word he would not try to break the rules in order to change the rules. Here is what he said a few months ago on the Senate floor: "Any other resolutions related to Senate procedure would be subject to a regular order process."

He even added this included considerations by the Rules Committee. There was no equivocating in the statement by the Democratic leader. There were no ifs, ands, or buts. This was January 24 of this year. Here we are again, less than 5 months later, and we are having this same argument.

Some Senate Democrats want to use the nuclear option to break the rules, to change the rules, and do away with the right to extended debate on nominations. This would be an unprecedented power grab by the majority. It would gut the advice and consent function of the Senate. It would trample the rights of the minority. It would deprive millions of Americans of their right to have their voices heard through their representatives here in Washington. The nuclear option would irreparably change this institution.

Republicans have raised principled objections to a select few of the President's nominees. In other cases, such as the DC Circuit Court, we simply want to apply the standard the Democrats had set, that the court's workload doesn't justify the addition of three more judges.

The President claims his nominees have been treated unfairly. Even the Washington Post's Fact Checker said the President's comments were untrue. The other day the Post Fact Checker gave the President not just one but two Pinocchios for his claims about Republican delays on his judicial nominees.

The White House and the majority leader don't want to hear it. They want the Senate to rubberstamp the President's nominees. The Democrats aren't happy with the rulings by the DC Circuit Court, and they want to avoid any more inconvenient questions about the Obama administration. Democrats claim they want to change the rules to make things move more quickly, but that is no excuse. Remember when the majority leader threatened the same drastic step a couple of years ago? One of the Democrats who stood up to oppose the current majority leader at the time was former Senator Chris Dodd. In his farewell speech in this body in late 2010, this is what Senator Dodd had to say:

I can understand the temptation to change the rules that make the Senate so unique—and, simultaneously, so frustrating. But whether such a temptation is motivated by a noble desire to speed up the legislative process, or by pure political expedience, I believe such changes would be unwise.

This was a Democratic Senator with 30 years of service in the Senate.

The reality is the pace of the Senate can be deliberate. Extended debate and questioning of nominees is a vital tool to help ensure the men and women who run our government are up to the job and are held accountable.

Under the system some in the majority want to impose, there will be less opportunity for political minorities to question nominees. There will be less government transparency. The faith of the American people in their government will get smaller and smaller.

I believe it would be a terrible mistake for Democrats to pursue the nuclear option and an irresponsible abuse of power. From the beginning the American political system has functioned on majority rule but with strong minority rights. Democracy is not winner-take-all. Senator REID gave his word. We negotiated in good faith earlier this year. We reached a bipartisan agreement to avoid the nuclear option. Using the nuclear option on nominations now would unfairly disregard that agreement. If Democrats break the rules to change the rules, political minorities and all Americans will lose.

I yield the floor.

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

Mr. GRASSLEY. I listened to my colleague from Wyoming. He states it very well. I have come to the floor for roughly the same reason, but I don't know how many times you have to say it, because I think basically what the Senator from Wyoming was saying, and what I want to say is it is very difficult to reach agreements in the Senate. But when you reach an agreement, particularly only if it involves two Senators but particularly if they are leaders of the Senate, a person's word is his bond. That bond ought to be kept—as far as I know, always kept. At least that has been my relationship with fellow Senators. You say you are going to do

something and you continue that until it is successful. So here we are, no Senator has not kept their word yet, but we hear this threat. So I come to the floor to give my comments on it.

At the beginning of this Congress, the majority and minority leaders reached an agreement as to how to proceed with rules changes. An agreement was reached. We agreed to two rule changes: One change to the standing rules and one to the standing order. Senate Republicans gave up certain rights and protections in those rules changes. That was the first part of the agreement. In exchange for these rules changes, the majority leader gave his word to Republican Senators he would not utilize what is called around here and around this town the "nuclear option" and not use it during this Congress.

Let me review the exact wording of that agreement as it is recorded for history in the CONGRESSIONAL RECORD. This year, on January 24, 2013, the following exchange took place in the Senate. Senator MCCONNELL stated:

Finally, I would confirm with the majority leader that the Senate would not consider other resolutions relating to any standing order or rules in this Congress unless they went through the regular order process?

The majority leader replied:

This is correct. Any other resolution related to Senate procedure would be subject to a regular order process, including consideration by the rules committee.

In fact, the majority leader gave his word at the beginning of the last Congress as well. He stated:

The minority leader and I have discussed this issue on numerous occasions. I know that there is a strong interest in rules changes among many in my caucus. In fact, I would support many of these changes through regular order. But I agree that the proper way to change Senate rules is through the procedures established in those rules and I will oppose any effort in this Congress or the next to change the Senate rules other than through regular order.

Let me just say when a Senator reaches an agreement and gives his word that he will stick to that agreement, that should mean something around here. As far as I am concerned, it means something all the time. I don't think I have been subject to entering an agreement with a colleague that hasn't been kept.

Let me emphasize something further. There was no contingency on that agreement. Republicans agreed to a change in the rules, and the majority leader gave his word he would not invoke the so-called nuclear option. That was the extent of the agreement, period. I trust the majority leader will keep his word and his commitment. If he pulls back on that commitment, it will irreparably damage the Senate.

Moreover, the notion there is now a crisis that demands another rules change is completely manufactured. The minority leader has spoken about the culture of intimidation. I am troubled it is finding its way into the Senate. For the record, in regard to why

there is some talk around this institution of changing the rules—something to do with nominations and particularly judicial nominations not moving fast enough—I am in the middle of that as ranking member of the Judiciary Committee. So far this year, we have confirmed 22 lower court nominees, with two more scheduled for this week. That is more than double the number of judges who were confirmed at this point during the previous President's second term—President Bush.

With the nominations this week, we have confirmed 195 of President Obama's nominees as lower court judges. We have defeated only two. That is a batting average of 99-plus percent. I don't know how much better we can get unless it is expected the Senate will not raise any questions about anybody appointed by any President to the judgeships of our country.

The claim we are obstructing nominees is plainly without foundation. I have cooperated with the chairman of the Judiciary Committee in moving forward on consensus nominees, and on the Senate floor there has been a consistent and steady progress on judicial nominations. Yet it seems as if the majority is intent on creating a false crisis in order to effect changes in long-standing Senate practices. They are now even threatening—can you believe this—to break the rules to change the rules. Again, I hope the majority leader keeps his word. We have certainly upheld our end of the bargain.

May I inquire of the Chair how many minutes are remaining for the minority in morning business?

The PRESIDING OFFICER. The Republicans control 15 minutes.

Mr. GRASSLEY. Fifteen minutes more?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRASSLEY. In regard to this whole issue about the Senate as an institution and where I said if this nuclear option holds it is going to destroy the Senate, I think it is very appropriate for us to remember the Senate is the only institution in our political branch of government where minority views are protected. In the House of Representatives, whether it is a Republican majority or a Democratic majority, as long as they stick together, they can do anything they want to and they can ignore the minority. But in the Senate, where it takes a supermajority of 60 to get something done, whether there is a Republican or Democratic minority, that minority is protected.

Today, where we have 54 Democrats and 46 Republicans, nothing is going to get done unless it is done in a bipartisan consensus way, and that is why it is so very important we do not destroy that aspect of the uniqueness of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BLUNT. I thank the Chair for the opportunity to speak, and I wish to

continue discussing what my good friend from Iowa was talking about.

There is a reason for the Senate. There are times when it is hard to figure out exactly what that reason is, with the lack of activity we have seen in the last couple of years, but that has very little to do with the rules of the Senate. It has a lot to do with the Senate not following its regular order, its regular procedures. In fact, when we have done that, whether it was the highway bill or the Federal Aviation Act or the farm bill, we have always produced a successful piece of legislation.

The Senate works when we let the Senate work. The Senate works when people are allowed to bring differing points of view to the Senate floor. Frankly, one of the reasons to be in the Senate is to have the ability to not only bring those ideas to the floor but to have a vote on those ideas; to let the American people know where we stand and to let the people in the States we represent know where we stand. The idea the Senate is now afraid of the amendment process is a great obstacle to the Senate getting its work done.

Another obstacle is constantly talking about changing the Senate rules. The Senate rules have served the Senate well for a long time and served the country well. The Senate rules are what define the Senate in giving individual Senators abilities they wouldn't otherwise have. This is the only body like it in the world where a bare majority can't do whatever it wants to do. If that is the way we want to govern the country, we have one of those bodies already. It is called the House of Representatives, where the majority absolutely rules, where the Rules Committee has nine members representing the majority and four members representing the minority.

I was the whip in the House for a long time—the chief vote counter in the House—and I can tell you that nine always beats four. It is not just 2 to 1, it is 2 to 1, plus 1. That is a body where the majority has incredible capacity to do whatever the majority wants to do. That is not the way the Senate is supposed to work.

We started off this year trying to agree on how to move the Senate forward in an agreeable and effective way, and now we are right back, every day now, hearing: We are going to have to think about changing the rules. When we hear the majority leader talking about changing the rules, it usually is not a good indication we will be prepared to get anything done.

The two leaders, when we started this year, agreed on a plan to make sure the Senate wouldn't unilaterally change the rules; that we would break the rules to change the rules. The thing we would have to do to change the rules is to break the rules, because the rules, once the Senate is constituted, can't be changed by just a majority of Senators. It takes more than that.

We created two new ways for the majority leader—not the minority leader but for the majority leader—to expedite Senate action. We gave new powers to the leader. One of these rules changes passed 78 to 16. The other one passed 86 to 9. These changes gave the majority ways to consider nominations and legislation and going to conference. The minority agreed, under certain circumstances, the ability to engage in debate could and would be limited.

But now we are back again having the same discussion. The only way the majority leader would be able to get what he apparently wants would be to break the rules. There are enough rules being broken, in my view, in Washington right now. One of the problems we face is that the country, frankly, does not trust their government. When we look across the board, from the IRS to what happened in Benghazi, to what the NSA has said in answering about the retaining of records, we don't need to do yet another thing to convince people there is a reason they should not believe what people in the government say.

Let's look at a few things the majority leader said on the Senate floor over the last couple of years. On January of 2011—January 27, to be exact—Mr. REID said:

I agree that the proper way to change the Senate rules is through the procedures established in those rules, and I will oppose any effort in this Congress or the next to change the Senate rules other than through the regular order.

That was January of 2011. Mr. MCCONNELL, in January of this year, said on the Senate floor—January 24:

I would confirm with the majority leader that the Senate would not consider other resolutions relating to any standing order or rules in this Congress unless they went through the regular order process?

That was Senator MCCONNELL's question. In response, Senator REID said:

That is correct. Any other resolutions related to Senate procedure would be subject to a regular order process, including consideration by the Rules Committee.

I am on the Rules Committee, and we are not talking about any rules changes in the Rules Committee, which Senator REID said in January of this year would have to be part of looking at that.

Of course, a lot of the discussion is: The nominations are taking too long. But these are important jobs, and there is a reason they take so long. In particular, judicial nominees serve for the rest of their lives. They are going to serve well beyond, in most cases, the President who nominates them. So they have taken a long time for quite a while.

I would think the facts are clear the Senate is treating President Obama's judicial nominees fairly and, in some ways, even better than they treated President Bush's nominees.

Already in this Congress, the Senate—in this Congress, the one that

began in January—the Senate has approved 22 of the President's lifetime appointments. Twenty-two people on the Federal bench for the rest of their lives, that is already happening this year. At a comparable point in President Bush's second term the Senate had approved only five of his judicial nominees.

In the last Congress, President Obama had 50 percent more confirmations than President Bush; 171 of his nominees were confirmed. His predecessor had 119 under similar circumstances, a time when the Senate was also dealing with 2 Supreme Court nominees who, by the way, also serve for life.

I think in the first term of President Obama the Senate made the kind of progress one would expect the Senate to make on these important jobs. In fact, President Obama has had more district court confirmations than any President in the previous eight Congresses. One would think that would be a pretty good record on the part of the Senate doing its job.

The Constitution says the President nominates but, it says, the Senate confirms. In my view, those are equally important jobs. In fact, one could argue that the last job, the one that actually puts the judge on the bench, is even more important than the first job.

Overall, the Senate has confirmed 193 lower court judges under President Obama and defeated only 2. The Washington Post cited the Congressional Research Service conclusion that from nomination to confirmation, which is the most relevant indicator, President Obama's circuit court nominees were being processed about 100 days quicker than those of President Bush. President Bush's nominees took about a year, 350 days. President Obama's take about 100 days less than that.

Let's look at the other side of nominations. There is a difference in the executive nominations, I believe, because they are only likely to serve during the term of the President and not exceed that. I think that creates a slightly different standard. The process on these nominations has been pretty extraordinary in any view. If anything, the Obama administration has had more nominations considered quicker than the Bush administration.

The Secretary of Energy was recently confirmed 97 to 0. The Secretary of the Interior was confirmed 87 to 11; the Secretary of the Treasury, 71 to 26. Those are substantial votes done in a substantial time. The commerce committee that I am on just this week voted out three nominations the President had made with no dissenting votes to report that nomination to the floor.

The Director of the Office of Management and Budget was confirmed 96 to 0. The Secretary of State was confirmed 94 to 3, only 7 days after the Secretary of State was nominated. Members of the Senate knew the Secretary of State pretty well. It was easy to look at that in a quick way, but it is pretty hard to

imagine a Secretary of State who can be confirmed quicker than 7 days after that person was nominated.

The Administrator for the Centers of Medicare & Medicaid Services was confirmed 91 to 7. The Chair of the Securities and Exchange Commission was confirmed by a voice vote. Yet in spite of all of that, we are being told by the White House and by others that somehow the Senate's record on these nominations is worthy of an unprecedented rules change, and that rules change would shut out the rights of the minority to fully review and debate, particularly, lifetime judicial nominations.

The very essence of the constitutional obligation of the Senate is to look at these nominations and decide whether these people should go onto the Federal bench for the rest of their lives.

I am hopeful that the majority leader will keep his word to the Senate and to the American people and ensure that we move onto this debate that should happen—didn't happen in January—and instead of changing the rules, we do what we are supposed to do and do it in a way that meets our obligations as a Senate and our obligations to the Constitution. Let's not break the rules to change the rules. Let's get on with the important business that is before us rather than going back to the business we have dealt with months ago.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 744, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 744) to provide for comprehensive immigration reform and for other purposes.

Pending:

Leahy/Hatch amendment No. 1183, to encourage and facilitate international participation in the performing arts.

Grassley/Blunt amendment No. 1195, to prohibit the granting of registered provisional immigrant status until the Secretary has maintained effective control of the borders for 6 months.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is on S. 744.

Mr. LEAHY. Is there a division of time?

The PRESIDING OFFICER. There is no such division of time.

Mr. LEAHY. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.