

If that were to happen, what would happen to that team? They would go on and perform, just as President Obama has done, but they would not play to their ability. And that is ridiculous. Yet that is where we are. That is exactly what Republicans are saying to President Obama: You can't have your team until we tell you everything is fine, and it is going to take a long time for us to tell you that. The gridlock the Republicans have created is not only bad for President Obama and bad for the Senate, it is bad for this country. We can have people come and give all the statistics in the world, but is there anybody out there in America who thinks this body is functioning well?

Upon examination of this record I have outlined of obstruction—of delay and filibuster—it can hardly be said Senator MCCONNELL has—to use his words—worked together to follow regular order and use his procedural options with discretion. It can hardly be said Senator MCCONNELL has worked with the majority to move nominations. It can hardly be said Senator MCCONNELL has worked with the majority to schedule votes on nominees in a timely manner except in extraordinary circumstances. But it could be said Senator MCCONNELL broke his word. That certainly could be said. The Republican leader has failed to live up to his commitments. He has failed to do what he said he would do—move nominations by regular order except in extraordinary circumstances. I refuse to unilaterally surrender my right to respond to this breach of faith. If Senator MCCONNELL wants to continue to defend the status quo of gridlock in Washington, he has that right. If Senator MCCONNELL wants to continue to believe there is no problem in the Senate, that is his choice. But the American people are fed up with gridlock, they are fed up with obstruction, and they are fed up with politics as usual. They want Washington to work again for American families.

I try every day of my life to be on the side of the American people. I wait and I wait, but I am not going to wait another month, another few weeks, another year for Congress to take action on the things we have been doing for almost 240 years.

#### RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. President, I sat here patiently and listened to the majority leader's speech, and I hope he will do me the courtesy to listen to mine, since this is a very important day in the history of the Senate. I want to make a couple of observations, which I hope my friend the majority leader will listen to.

First, he is trying to justify in advance what would be a very clear fail-

ure to honor his very clear commitment not to break the rules of the Senate. What he is referring to are his own statements, not mine, regarding extraordinary circumstances. He said that, not me. In other words, to justify breaking his clear commitments not to break the rules of the Senate in order to change the rules of the Senate, he is attributing to me something somebody else said, and that somebody else, by the way, is him. He is attributing to me something he said.

We need to keep our commitments around here and not break them, and we need to be honest about quoting people around here. This is about trying to come up with excuses to break our commitments. What this is about is manufacturing a pretext for a power grab.

I listened very carefully to what the majority leader had to say. What he is saying, in effect, is he doesn't want to have any controversy at all attached to any of the nominees. In other words, don't ask any questions. Advise and consent means sit down and shut up.

He was complaining about the number of questions the nominee for EPA Administrator was required to answer.

What he conveniently left out was the chairwoman Senator BOXER requested 70,000 documents. Why is it OK for the chairwoman to request 70,000 documents and somehow if the ranking member makes a lot of requests it is some violation of some comity? When the Founders wrote "advise and consent," I don't think they had in mind sit down and shut up.

It is noteworthy that all of the people he is complaining about got confirmed. So what he is saying is he doesn't want any debate at all in connection with Presidential appointments, just sit down, shut up, and rubberstamp everything, everyone the President sends up here.

On the calendar right now there are 21 nominations—21. There are 148 in committee. We don't control the committees, he does: 148 in committee, 21 on the calendar. It is pretty obvious Senate Democrats are gearing up today to make one of the most consequential changes to the Senate in the history of our Nation.

I want everybody to understand, this is no small matter we are talking about. I guarantee you it is a decision that if they actually go through with it, they will live to regret. It is an open secret at this point that big labor and others on the left are putting a lot of pressure on the majority leader to change the rules of the Senate and to do so, as he promised not to do, by breaking the rules of the Senate. That would violate every protection of the minority rights that has defined the Senate for as long as anyone can remember.

Let me assure you, this Pandora's box, once opened, will be utilized again and again by future majorities and it will make the meaningful consensus-building that has served our Nation so well a relic of the past.

The short-term issue that has triggered this dangerous and far-reaching proposal is simple enough. The hard left is so convinced that every one of the President's nominees should sail through the confirmation process that they are willing to do permanent irreversible damage to this institution in order to get their way, and it appears as if they have convinced the majority leader to do their bidding and hijack the Senate. They are not interested in checks and balances. They are not interested in advise and consent. They are not even interested in what this would mean down the road when Republicans are the ones making the nominations. They want the power and they want it now. They do not care about the consequences. The ends justify the means ethos has been resisted by basically every Senate leader in the past and it is a clear and unequivocal violation of the public assurances that the current majority leader made to the entire Senate, his constituents, and the American people just a few months ago.

What is worse is we got to this point on the basis of an absolute fairytale, a fairytale. Obviously, the left needed an excuse to justify such an unprecedented power grab, so they simply made up a story about Republicans blocking the President's nominees. The majority leader is entitled to his opinion, but he is not entitled to his facts. The facts are the facts. Here is the real story. Almost nothing about this tale so often repeated around here holds up to scrutiny.

The facts are that this President took office and the Senate has confirmed 1,560 people. The Senate has confirmed every single one of the Cabinet nominees who has been brought up for a vote—every single one. The President has gotten nearly three times as many judges confirmed at this point as President Bush in his Presidency.

Here is the point. What this whole so-called crisis boils down to are three nominees the President unlawfully appointed—as confirmed by the courts. A Federal court has held the three nominees were unlawfully appointed. Two of the three are direct parties to the litigation and the third one was appointed at exactly the same moment in the exact same way. One of these nominees has been held up by inaction over at the White House related to structural reforms that the administration and even the nominee himself, Mr. Cordray, now say they are willing to work with us on. The fact is, indisputably, we have been confirming lawfully nominated folks routinely and consistently: The Energy Secretary, 97 to 0; the Secretary of the Interior, 87 to 11; the Secretary of the Treasury, 71 to 26; the Secretary of State, 94 to 3, just a few days after the Senate got his nomination; the Secretary of Commerce, 97 to 1; the Secretary of Transportation, 100 to 0; the Director of the Office of Management and Budget, 96 to 0; the Administrator of the Centers for Medicare

and Medicaid Services, 91 to 7; the Chair of the Securities and Exchange Commission, on a voice vote—in other words, unanimously.

What about the nominees still awaiting confirmation who have not—not been unlawfully appointed? The Senate is ready to vote on them too. Regrettably, in my view, frankly, all of them appear ready to have the votes to be confirmed. I don't necessarily support them, but they have the votes to be confirmed. Why don't they call them up? The majority leader determines what the order of business is around here. He could have scheduled votes if that is what he wanted to happen. Why don't we have a vote on the Secretary of Labor? What about the Administrator of EPA? The NLRB nominees who were not unlawfully appointed—there are some other NLRB nominees who were not unlawfully appointed—why aren't we voting on them?

As I said, pending the expected negotiations on reforms to the CFPB, the Senate would likely confirm the chairman to that position as well.

We need to be honest about what is going on around here. The only crisis is the crisis the Democrats are creating with their threats to fundamentally change the Senate, something the majority leader said just a few years ago he would never even consider. Here is why he said that: Because going down this road is “ultimately . . . about removing the last check in Washington against a complete abuse of power.”

Those are the words the majority leader himself used in describing the very thing he is now threatening to do—the very thing he is now threatening to do.

Let me sum up what is going on around here. Senate Democrats are getting ready to do permanent damage to this body to confirm three unconstitutionally appointed nominees by a simple majority vote. They are willing to break the rules of the Senate to change the rules of the Senate in order to confirm three nominees that the Federal courts have said were unlawfully appointed. Every other nomination we are talking about has either already been confirmed or is on the way to being confirmed, but they will not call them up. He gets to decide when we vote. Where are the callups for EPA and Labor and the three NLRB nominees lawfully appointed?

If this is not a power grab, I don't know what a power grab looks like. The President appoints three people unconstitutionally, the second highest court in the land confirms they were unlawfully appointed, and Senate Democrats want to break the rules of the Senate to confirm them. This is not the story we just heard from the majority leader, but this is a fact.

The entire phony crisis—absolutely phony, manufactured crisis—boils down to three unlawfully appointed nominees. The Democrats say we are holding up the others. It is not true. He gets to schedule the votes. Where are

they? Bring them up. The truth is, if there is anyone to blame for holding up things in the Senate it is the Democratic majority. They are the ones blocking nearly 30 fast-track nominations, many of whom Republicans have already agreed to confirm unanimously. They are the ones, the Democrats, who have yet to schedule votes on McCarthy and Perez, despite the fact that both of these highly controversial nominees already have enough votes to clear the 60-vote hurdle.

I do not like the facts, frankly, and I am not going to be voting for either of these nominees. Tom Perez in particular is a far left ideologue whose record of bending the rules to achieve his ends is deeply concerning to me and just one of the reasons I plan to vote against him. But to pretend the power to confirm these folks lies in the hands of anyone but the majority leader is totally disingenuous.

The White House knows what I have just said. I have told them. The majority leader would know it too if he spent a little more time working with his colleagues in a collegial way and a little less time trying to undermine and marginalize people.

The real reason, as I said, is that the far left and big labor are leaning hard on Democrats to go nuclear. Go nuclear—they love the sound. The majority leader is about to sacrifice his reputation and this institution to go along with it because what they truly want is for the Senate to ratify the President's unconstitutional decision to illegally appoint nominees to the NLRB and the CFPB without the input of the Senate. They know they cannot get that done under current rules. They know time is not on their side. The second highest court in the land ruled unanimously that President Obama had no power to do what he did. Another court has since concurred. Now the Supreme Court is set to hear the case in just a few months. They obviously thought it was important enough to be dealt with at the highest Court in the land.

This is not a fight over nominees at all. It is a fight over these illegal, unconstitutionally appointed nominees. It is laughable to think Democrats would ever agree to such a thing if we were talking about a Republican President's unlawful nominees—laughable.

It is equally irrational to think we would go along with this. In fact, no Senator, regardless of party, should ever consider ceding our constitutional duties in such a way.

I advised the Romney team before the election that if he won and I was ever elected majority leader, I would defend the Senate first in these battles. I would defend this institution against a Republican President trying to abuse it. That is a precedent set by majority leaders, such as Robert Byrd, who revered this institution because they knew what it was to be in both the majority and the minority. It is what the best leaders of the Senate have always

done. It is absolutely tragic to think these days may be over.

Here are the battle lines. On one side are people who think the President should have the power to unconstitutionally ignore Congress and their constituents. Those are people who believe in it so firmly that they are willing to irreparably damage the Senate to ensure they get their way. They are willing to do something the majority leader himself said would contribute to the ruination of the country. I am not making up his quotes; that is what he said.

On the other side are the folks in my conference, and even some Democrats, with the courage to speak up against this power grab. We are the folks who believe deeply that a President of any party should work within the bounds of the Constitution, and that Senators of both parties should fulfill their own constitutional obligations to thoroughly vet nominees. We also believe in giving those nominees a fair hearing. If you look at the facts, you will see we have already been doing that.

As Senator ALEXANDER noted, no majority leader wants written on his tombstone that he presided over the end of the Senate. Well, if this majority leader caves to the fringes and lets this happen, I am afraid that is exactly what they will write. In the majority leader's own words: Breaking the rules to change the rules is un-American. Those are his words, not mine.

I hope the majority leader thinks about his legacy, the future of his party and, most importantly, the future of our country before he acts.

I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I assume the words “I agree” are words that mean something. We had a colloquy on the floor, and at that time he said he wouldn't do anything extraordinarily—he said that, and I said I agree.

I would like to talk about a few other things. Here is a direct quote Senator MITCH MCCONNELL of Kentucky said a few years ago: The Senate has repeatedly adjusted its rules as circumstances dictate. The first Senate adopted its rules by a majority vote which specifically provided a means to end debate instantly by a simple majority vote.

This was the first Senate at the beginning of our country, and that was so we would have the ability to move the previous question and end debate. This is not the first time a minority of Senators has upset a Senate tradition or practice. The current Senate majority intends to do what the majority of the Senate has often done: Use its constitutional authority under Article I, Section 5 to reform Senate procedure by a simple majority vote. That is what Senator MCCONNELL said.

The interesting thing here is my friend talks as if: Gee, this has never been done before. But the fact is it has been done many times. Since 1977, it

has been done 18 times—about twice every year. I think that is pretty interesting. It has happened 18 times just since 1977: December 12, 1979; November 9, 1979; March 5, 1980; June 11, 1980; June 10, 1980; another time in 1980; 1986, 1985, 1987, 1995, 1996, 1999, 2000, 2011. Those are the times the rules have been changed, overruling precedence—as my friend Senator McCONNELL said—with a majority vote.

It is also important to note that, without getting into a lot of legal jargon, the Constitution gives the nomination power to the President. The Constitution does not provide for a supermajority of the Senate to provide its advice and consent. The Drafters of the Constitution knew how to provide for supermajorities when they wanted to. The very same clause in the Constitution that gives the President the appointment power—the clause from which I just quoted—also provides for consortium of treaties, which is two-thirds. Same paragraph. Legislation and other things require a simple majority.

My friend the Republican leader has made my point. He talks about all the votes—97-0, 100-0, 98-0. That is the whole point. It takes months and months and sometimes years to get to where we can vote. They stall everything they can, and they have done that. That is the whole point. It was supposed to only be under extraordinary circumstances, and I went into some detail to explain that. Is this extraordinary circumstances? Of course not.

He talks about Richard Cordray and how they just want a little tweak in the law. Here is the tweak in the law they wanted: Dodd-Frank knew we would have trouble with the appropriations process because the Republicans don't let us do much appropriating at all. So in the wisdom of the people who drafted Dodd-Frank, they said: We are going to make sure the position that Cordray is talking about always has the resources to do what they want to do. So they did something unique and said the money will come from the Federal Reserve. The little tweak the Republicans want to do is to switch that and give it to the Appropriations Committees. They won't let us do appropriation bills. That is like giving us nothing.

My friend went into great detail about the NLRB. For the entire history of this country, the President has had the power to recess-appoint people. The Republicans have found a gimmick here that now they are saying—no one has raised any objection about the qualifications of the people the D.C. Circuit said shouldn't be sitting there. No one raised anything about their qualifications. If there were an effort to avoid what is going on around here, they should approve these people.

The other Alice-in-Wonderland statement made by my friend is: The majority leader can set votes whenever he wants. Oh, don't I wish. Stall and ob-

struct is what we have around here. It is very hard to schedule votes. As has been indicated by me a few minutes ago, we wait and we wait, and finally we get a vote after months and months—and I indicated sometimes years—and then it is a big and overwhelmingly positive vote. Yes, because there is nothing wrong with the person to begin with.

As I said early on: He makes my case. There isn't a single word that has been said here today about the qualifications of the three people who are seeking to go on the NLRB—or the two Republicans. He has not produced any facts to question their abilities. He just argues that the President's timing was not quite right.

I think everyone realizes that when you are trying to get somebody confirmed, such as Richard Cordray, and you are waiting 725 days, maybe that is a little too long.

Listen to this biggy here: The Principal Deputy Under Secretary of Defense for Acquisition, Technology and Logistics—that may sound like a big fancy word, but that is an extremely important position in the Secretary of Defense's office—has been waiting 300 days. The Governor for the International Monetary Fund, Jack Lew, our present Secretary of Treasury, has been waiting 169 days. It is now probably 172, I guess, since this could be old; the EPA, 128 days; Secretary of Labor, 114 days; NLRB, 573 days; the Chairman of the Export-Import Bank, 111 days; Associate Attorney General, 294 days; Chemical Safety and Hazard Investigation—shouldn't we have something going there? Well, they don't believe in the program so we have been waiting now for 295 days to even have a vote on that.

Remember, he said I can schedule a vote whenever I want. I wish that were true.

Member of the Board of Directors for the Tennessee Valley Authority, 292 days; Commissioner of the Rehabilitation Services Administration, 156 days. The average of those few people I mentioned comes to 260 days.

I presented my case. The case is: This is not working. For the Republicans to come here today and say: Well, that is fine, we will give you Cordray, all we want you to do is change things so the man never has any money to do his job doesn't sound like a very good deal to me. There has been no answer to these periods of times when we waited and waited, and finally we get somebody approved by an overwhelming margin. Why? Because all they are doing is stalling.

I used to do a little work in the courts and I would have a jury. I would appeal to the jury to make a decision. The jury I am appealing to right now is the American people. They know the Senate as it used to work. Our approval rating is in the swamps, and we need to do something to change that. Will this change everything? No. But remember: Since 1977, the rules of the Senate have

been changed a couple of times a year in this body. My friend the Republican leader said previously that that is okay; that is what the majority could do.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. McCONNELL. Mr. President, on the issue of delay, there are 148 nominations in committees. The majority leader's party controls the committees. They can come out at any point. On the calendar of business on the floor 21 nominees are pending.

The majority leader, I am sure, will remind everybody he always gets the last word so I am sure he will speak again. But I would remind everybody of the core point here: He gave his word without equivocation back in January of this year that we had settled the issue of rules for the Senate for this Congress. That was in the wake of a bipartisan agreement to pass two rule changes and to pass two standing orders. So at the core of this is the majority leader's word to his colleagues and the Senate as to what the rules would be for this Congress. He gave his word, and now he appears to be on the verge of breaking his word.

Secondly, the only nominees—let's make sure we understand this—likely to have a problem getting cloture are the ones who were unconstitutionally appointed, according to the Federal Court in the District of Columbia.

So where we are is the majority leader wants to fundamentally change the Senate after breaking his word in order to jam through three nominees the Federal Courts have said were unconstitutionally appointed. That is where we are.

I think it is a sad day for the Senate. I hope the majority leader will reconsider what I consider to be a highly irresponsible action on his part.

Is the Senator from Tennessee going to pose a question to me or to the majority leader?

Mr. ALEXANDER. I will wait until the majority leader finishes.

Mr. McCONNELL. I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. My friend the Republican leader continues to ignore his words, that he would process nominations consistent with the norms and traditions of the Senate. Please. That is just ignored by him? If anyone thinks since the first of this year that the norms and traditions of the Senate have been followed by the Republican leader, they are living in gaga land.

The Republican leader agreed that we should not have filibusters except in the case of an extraordinary circumstance. He agreed with that, but he ignores that.

I think it is also worth talking a little bit here about how the Republican leader complains that people just don't like Congress. Well, there is a reason for that, and the Republican caucus deserves most of the blame. The Gallup organization polled Americans last

month and asked for some of the reasons why people disapprove of Congress. The two top reasons outdistance all others. They don't like Congress because of gridlock and not getting anything done. Is that our fault? No.

Surveying the years that President Obama has been in office, one can see time after time when Democrats reached out to Republicans to get things done, and no one can see where they have done that. One can see that time after time the Republican leader has pressured his colleagues not to work with us.

There is no reason Congress should be held in such low regard. We should clear the calendar. They are not going to do that. They are going to continue this process over the next 3½ years, badgering, saying: We are really good. We got this nomination done, and we approved it 98 to 0—after waiting months.

It is the first time ever in the history of this country that the Secretary of Defense has been filibustered.

So I appeal to my friends on the other side of the aisle, remember the words I read from Senator McCONNELL where he said a simple majority has the right to do this. And we know that is true.

Mr. WICKER. Would the distinguished majority leader yield for 30 seconds?

Mr. REID. I would be happy to yield for a question.

Mr. WICKER. I would ask the majority leader, in an hour or so Democrats are going to have lunch with Democrats, and Republicans are going to go to another room and have lunch with Republicans and talk to each other about what the other side is doing. This is such a serious matter. It may be the wise thing to do. I totally disagree. But I think the majority leader will agree that this is a watershed moment.

Could it be that early next week, just once we could all meet together, perhaps in the Old Senate Chamber—every Democrat and every Republican—for a caucus where actually Republicans listen to Democrats as to what they perceive as the grievances and rank-and-file Democrats listen to our side?

People are off in classified briefings right now. People are in committee meetings. People are doing the work of the Senate whether the public realizes it or not.

We are not listening to each other as rank-and-file Members. I would implore the leadership of this body, next Tuesday let's clear the Old Senate Chamber and get every Republican and every Democrat who wants to be there and actually quit talking past each other and see if there is a way for us to avoid this pivotal watershed moment in the history of the Senate.

Mr. REID. I appreciate the remarks of my friend from Mississippi. I am going to start the process today. I am going to file cloture on a bunch of nominations, and those votes will

occur next week when we schedule them. I would be happy to see if there is a way I can meet with a few Senators. I have already done that with a few Republican Senators, and I am happy to see if there is a way of getting us together. We had a nice caucus together not long ago led by Senator McCain, which was really memorable, but I listened to a bunch of them.

I say to my friend, if you are so concerned—and I know you are—about the process, I think you need to take a look at where you are.

About Cordray, I am so tired of hearing this tweaking: All we need is to tweak this a little bit and we will let you have it.

I repeat, I say to my friend, that the tweak is to take away his ability to exist. That is not a tweak; that is further obstruction and distraction from what a law we have is meant to do.

The NLRB, all the happy-talk I hear here—and I don't say that to disparage anyone—we will be happy to help you with that, but get rid of those two people.

No one questions their qualifications.

And I am happy to hear my friend here suddenly so enthused with that court decision. The court decision doesn't stop us from doing anything. The court decision is something that says that we can do whatever we want to do. We are a legislative branch of government. We don't have to follow what the Supreme Court does.

So without going into any more dialog, I appreciate what my friend says. I think what he needs to do with his caucus—we are going to have one today—is take a look at NLRB. There are five of them. We have no problem with the two Republicans. Let's get that done. Let's get Cordray done. Let's get the Secretary of Labor, who has waited such a long time, and we have the Secretary of the EPA.

I say to my friend, I don't know why his caucus has such heartburn over things dealing with labor. My friend said—I don't know exactly—leftwing big labor bosses. We have the Secretary of Labor who is being held up. We have three NLRB people being held up. Let's try to work our way through that. I would be happy to listen to any way he thinks we can get through that. If we can't, Tuesday we know what is going to happen.

Mr. WICKER. Just to understand, is that a yes on trying to get us together, as Republicans and Democrats, as early as lunch Tuesday to see if there is some way we can talk about this?

Mr. REID. I am happy to consider that. I have talked to a number of Republican Senators. One of them called me at home last night. I was happy to take the call. He said: What happens if cloture is invoked on the people you put forward? Well, if that happens, I have no complaints. I would hope everyone would learn from this process.

I think we need to look at what I just said. All you need is six Republicans to agree to do something about NLRB, to

do something about Cordray without taking away his abilities.

Are there any appropriators here on the floor? I have been away from the committee for a while. We are not doing much appropriating around here. I know Senator McCONNELL and I were on the committee together. I gave my spot up to Ben Nelson some time ago. I still have seniority protected there.

So I am happy for the Senator's suggestion. We will take a look at that. But it is a very simple problem here. We need to get the labor—and they are not big bosses. But my culinary workers—70,000 of them in Las Vegas alone—who have problems with management, they want to be able to gripe to somebody.

Mr. WICKER. Would the distinguished leader yield on simply one further matter?

Mr. REID. Sure.

Mr. WICKER. Did the majority leader understand, as I did, Leader McCONNELL saying just a few moments ago that the Secretary of Labor nominee is likely to go forward very soon?

Mr. REID. That is what he said.

Mr. WICKER. And that the EPA Administrator is likely to go forward almost immediately? So we really are down to the three positions where there has been a U.S. appeals court decision, which arguably could be viewed as an extraordinary circumstance.

Mr. REID. I say to my friend, this is the first time we have dealt with this. As the Senator knows, Senator McCONNELL is one of those who led the charge a number of years ago. I read part of his statement.

It would seem to me that it would be appropriate for folks to understand what I just said. It doesn't take somebody who has been here as long as Senator Byrd was.

I would also say this. To say to me now: We are going to do McCarthy—well, she has only waited 150 days. We are going to do Perez; we will do him right now. But that is the problem, I say to my friend—we shouldn't be waiting around here for months and months to get a vote on one of these nominees. That is the whole issue.

So I appreciate his consideration. I am going to go now to my office and meet a few people. I am happy to answer any questions while I am here on the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. First of all, I know there have been a number of conversations, and I appreciate the majority leader allowing me to talk with him recently on the phone. And I know we have an issue here. I would just go back to the question from the Senator from Mississippi.

Last night I was on the phone with numbers of Members of high esteem in the Senator's caucus, and when I talk with them about this issue, they have no understanding whatsoever about any background. They just say: Look, I am frustrated, so I am going to vote for the nuclear option.

And I would say, to respond to the Senator from Mississippi, that the Senator is right. So we have some things that are coming up here momentarily. It is possible that many of them—maybe all but many of them—will be resolved. But it seems to me, unless we do the thing the distinguished Senator from Mississippi just mentioned, there is going to be a continual gap of knowledge regarding these issues.

So I would just say that I think the majority leader knows I do everything I can and the senior Senator from Tennessee does everything he can to try to make this place work. We want to solve our Nation's problems.

I think if the majority leader will put the actual votes off to at least Wednesday, there may be some resolve. But I really would please ask that we have that opportunity the Senator asked for so that really both sides—we need to understand the other side's grievances more, and I know very respected Members on the Democratic side need to understand ours. I think that would be very, very helpful, and I really believe it would cause the leadership to be far more productive and worthwhile, and the majority leader could come in every morning smiling the way he is right now.

Mr. REID. Mr. President, to my friend from Tennessee, from the day he got here he has tried to follow on the mold set by Senator ALEXANDER. They are both conciliators. They like to work things out. We haven't been able to work too many things out, but they try. No one tries harder than they do.

I just want to say this: We talk about extreme circumstances. That was the colloquy my friend and I had here on the floor. So to now say the NLRB is extreme circumstances is like somebody setting a house on fire and then complaining their house is gone. The extraordinary circumstances have been created by you guys.

So I say again to my friends here in the Senate that I would be happy to do a joint meeting with the two caucuses but not to come here and just throw numbers around. The point is that I want this resolved and I want it resolved one way or the other. I am through.

Just to remind everyone, for two Congresses—the last one and this one—I have gone against the wishes of the vast majority of my caucus not to have done something before. And we did a few things. Most of them were window dressing that hasn't accomplished much of anything on the rules that we changed.

So I am happy to have a group of Senators indicate to me how we are going to get these people I have on the calendar done. This is no threat. I just think that would be the appropriate thing to do. If we have something positive to report in a joint meeting without going back to the same stalling, obstruction—I don't need to go over this list of people again. Some have been waiting for years to get some-

thing done. I just am not going to continue doing that. We have to have something more than my friend coming to the floor and saying: I am not going to do anything unless there are extraordinary circumstances. I think that has been stomped into the ground. So there is name-calling we need to stop.

I am happy to go to my caucus today and make my case. I am very fortunate that I have a pretty good hand on the caucus, and we are going to go ahead and do what is good for the country. I hope that, as everyone knows, the vote will be scheduled anytime we want on Tuesday.

Any other questions?

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12:30 p.m. will be equally divided and controlled between the two leaders or their designees, with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the second 30 minutes.

The Senator from Tennessee.

#### NOMINATIONS

Mr. ALEXANDER. Mr. President, I thank the majority leader for his statement, for the time he has spent.

I was looking at the Executive Calendar. But, first, I have spent most of this week working on the student loan issue, as the majority leader knows. And we are coming to an agreement, it looks like, as we have with a number of other things. But I would like to renew to the majority leader the suggestion that we all get together next week and talk this through, as the Senator from Mississippi has suggested. I think it would be a wise thing to do.

There are other Senators here who wish to speak, so I will try to be succinct. Let me address just a few of the points the majority leader made.

One reason I think it would be wise for us to get together as Democratic and Republican Senators is what he is saying is different from the way I read the facts, and one of us has to be wrong about that.

For example, have Republicans used the filibuster to deny President Obama's nominees a position in government? The answer is a fact. I invited the Senate Historian and the Congressional Research Service over to my office. I asked them the question. Here is the answer to the question: In the history of the Senate, no Supreme Court Justice has ever been denied his or her seat by a filibuster. There was a little incident with Justice Fortas that Lyndon Johnson engineered, but that was different. So in the cases of the Supreme Court, zero.

How many district judges have been denied their seat by filibuster? The answer is zero.

How many Cabinet members have been denied their seat by a failed cloture vote filibuster? The answer, according to the Senate Historian and the Congressional Research Service, is zero.

How many circuit judges have been denied their seat by a filibuster? The answer is seven. How did that happen? Democrats, for the first time in history, when President George W. Bush came in, blocked five. And we said: Well, if you are going to change the precedent, then we will change the precedent, so we blocked two. That is what happens around here. But other than that, it is zero.

Then the majority leader said there has been some big delay about President Obama's nominees. These are not throwing statistics around. That is either true or it is not true.

Here is what the Washington Post says and the Congressional Research Service says. The Washington Post, by Al Kamen, on March 18, 2013: President Obama's second-term Cabinet members are going through the Senate at a rate that "beats the averages of the last three administrations that had second terms."

President Obama is being better treated in terms of his Cabinet nominees than the last three Presidents.

I asked the Congressional Research Service the same question. They said: As of June 27—last month—his nominees were still moving, on average, from announcement to confirmation, faster than those of President George W. Bush, faster than those of President Clinton.

Someone in the Democratic caucus needs to hear this. The number of Cabinet nominees who have been denied a seat by filibuster is zero. President Obama's Cabinet nominees are moving through the Senate faster than his last three predecessors. That is important information.

Now, are there a lot of nominees sitting around for too long a period of time? I have the thing we call the Executive Calendar right here. Senator MCCONNELL referred to it. I could go through it quickly. I count 24 people on the calendar. The one who has been on there the longest was reported by committee on February 26 of this year. That is a little over 4 months ago.

Let's be very elementary about this. The only way you get on this calendar is to be reported out of committee. The only way you get out of committee is for the Democratic majority to vote you on to this calendar. So we can fill this calendar up any time the Democratic committee majority wants to.

Of the people here, there is a brigadier general named Long. The committee has asked that we hold that. There is Jacob Lew to the International Monetary Fund. Bring him up. Bring him up. He will be confirmed.

Let's go back to that. The only way you get a name to a vote on the floor is if the majority leader brings his name to the floor. Jacob Lew has been

reported from Committee since April 16. Bring him up.

Here is an Air Force person. Here is Ms. McCarthy from Massachusetts. She has been reported from the committee. Bring her up. The Republican leader has said she will get cloture. That means she will be confirmed. He said the same thing about the nominee for the Department of Labor. He has been reported since May 16.

Mr. President, I am not a very controversial person. I was held up for 88 days by an ill-tempered Democratic Senator, for what I thought was no good reason, relying on article II, section 2 of the Constitution's right to advise and consent. President Reagan's nominee for Attorney General Ed Meese was held up for 1 year, and nobody thought about changing the rules of the Senate because it used its constitutional authority to advise and consent. Former Senator Rudman was held up by his home State Senator until Rudman withdrew his name, and then he ran against that Senator and was elected to the Senate.

The advice and consent responsibility of the Senate has gone on since the days this country was founded.

If you go down through this list of people, there are only 24 on the list. He could bring them all up. And 24 is not very many.

Then it reminds me that right after that are the privileged nominations. What are those? Those are the result of our rules changes which removed a number of people from Presidential confirmation and created a whole new category for several hundred executive positions so they do not go through a more cumbersome process, and that is working very well.

So zero filibusters denying nominations, Cabinet members going through the Senate more rapidly than the last three Presidents. So what is the beef? What is going on? There are only three judges on this calendar, an embarrassingly small number for us to deal with. We could clear this calendar in one afternoon. How do we do that? The majority leader brings them up—except for three who are illegally appointed.

Now, I will not go into a long thing about the three illegally appointed, except to say they are illegally appointed.

Most of the Founders of this country did not want a king. They created a system of checks and balances, and they created a Congress, and they created an ability for us to restrain an imperial Presidency. That is what this advice and consent is supposed to do, and we should exercise that, as former Senator Byrd used to say most eloquently on this floor. It is our opportunity to answer questions. Just because the majority leader seeks to cut off debate does not mean that person is being denied confirmation.

I will give you an example: Secretary Hagel. The majority leader tried to cut off debate 2 days after he came to the floor from the committee. We said: We

want a little more time to consider this. We will be glad to vote for him for cloture in 10 days. He went ahead with the cloture vote and called that a filibuster. But Secretary Hagel is sitting in his spot as Secretary of Defense today.

So you can go down through all of these nominations and really find no evidence—no evidence whatsoever. So we need a meeting of the two caucuses to say: What is going on? Why are you seeking to do this?

The last thing I would like to say is, it is appropriate from time to time in the case of subcabinet members to use the cloture to deny a seat. That has happened seven times. John Bolton was one that the Democrats did to President Bush.

As I conclude my remarks, I would like to say this: The majority leader said: Well, we have changed the rules 18 times.

Never like this. What he is proposing to do is to turn this body into a place where the majority can do whatever it wants to do. That is like the House of Representatives—so the majority can do whatever it wants to do. A freight train can run through the House of Representatives in 1 day, and it could run through here in 1 day if the Majority leader does this. This year it might be a Democratic freight train. In a year and a half it might be the tea party express. There are a lot of people on that side of the aisle who might be very unhappy with the agenda that 51 people who have creative imaginations on this side of the aisle could do if they could do anything they wanted to do with 51 votes.

I like to read a lot of history. John Meacham's book about Jefferson has a conversation between Jefferson and Adams at the beginning of our country. They were President and Vice President, I guess, at the time. Jefferson said to Adams he feared for the future of the Republic if it did not have a Senate. "[N]o republic could ever last which had not a Senate. . . . [T]rusting the popular assembly"—that means the House, that means a majority vote institution—"for the preservation of our liberties. . . . [is] the merest chimeria"—or illusion—"imaginable."

One other distinguished public servant said the same thing in his book in 2007. This is what HARRY REID said in his book when he wrote about the nuclear option. He was talking about the then-majority leader Senator Frist. He decided to pursue a rules change that would kill the filibuster for judicial nominations.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. ALEXANDER. I will be through in just a minute. I ask unanimous consent to speak for another minute.

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

Mr. ALEXANDER. So the leader said: Senator Frist of Tennessee, who was the Majority Leader, had decided to pursue a

rules change that would kill the filibuster for judicial nominations.

This is HARRY REID writing.

And once you opened that Pandora's box—Said Senator REID—

it was just a matter of time before a Senate leader who couldn't get his way on something moved to eliminate the filibuster for regular business as well.

Senator REID wrote:

And that, simply put, would be the end of the United States Senate.

I do not want Senator REID to have written on his tombstone he presided over the end of the Senate. Yet if he does what he is threatening to do, that would be what he is remembered for in the history of this country.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, I listened very carefully to the majority leader this morning. What he said was confirming nominees should be the norm, not the exception—confirming nominees should be the norm, not the exception.

Well, I would ask, respectfully, that the majority leader take a look at actually the record because you cannot ignore the facts.

Of the 1,564 nominations that President Obama has sent to the Senate, only 4 have been rejected—4 of 1,564. During the first 2 years of the President's first term in office—the 111th Congress—the Senate confirmed 9,020 nominees and rejected 1. In the second portion of that first term—which was the 112th Congress—the Senate confirmed 574 nominees and rejected just 2. Now, during the 113th Congress, the Senate has confirmed 66 nominees and rejected just 1.

In terms of Cabinet nominees—and we heard the majority leader speak of that—the Congressional Research Service shows that President Obama's nominees have waited an average of 51 days. That is shorter than for President George W. Bush and shorter than the time under President Clinton.

When you take a look at judges—and the majority leader talked about that—the Democrats should remember the Senate has already confirmed more judges this year so far than were confirmed in the entire first year of President Bush's second term.

When you go over this item by item, detail by detail, what you see is that confirming nominees is the norm, not the exception.

It was interesting to listen to the majority leader talk about Don Berwick, who was actually nominated to be the head of Health and Human Services, Medicare. As the Medicare nominee, what happened? The Democratic chairman of the committee never even scheduled a hearing. The Democrats are in charge of that nominee. The President made a recess appointment. There was never even a nomination hearing.

We go through the years and look at the quotes, and here is Senator REID in 2005:



Some in this Chamber want to throw out 214 years of Senate history in the quest for absolute power.

He said:

They think they're wiser than our Founding Fathers.

Senator REID said:

I doubt that that's true.

I think we should all follow that advice. We are not wiser than the Founding Fathers. It is not time to throw out the rules.

Then, even as majority leader, in 2009, Senator REID said:

[T]he nuclear option was the most important issue I've ever worked on in my entire career, because if that had gone forward it would have destroyed the Senate as we know it.

So there is not a problem with President Obama's nominees being treated fairly and being treated in a timely fashion. There is not a problem with his nominees in terms of not being confirmed—1,560 confirmed, 4 rejected.

Senate Democrats should remember—should remember—their prior commitments and abandon this plan before irreparably damaging the Senate.

I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

#### SENATE RULES

Mr. MERKLEY. Mr. President, this morning a significant debate began on the floor of the Senate as to how to make the Senate function within the framework of the Constitution and within the norms and traditions of the Senate.

Indeed, the Constitution envisioned three coequal branches of government, and it provided checks and balances. One of those was that when the President nominates individuals for executive branch positions, Congress could serve as a check. Specifically, the Senate was given that power, to review the qualifications and make sure there was not something outrageous about the nomination, as a check on the Executive.

This principle was embedded as a simple majority review. Indeed, in the Constitution, it is in the same paragraph that lays out a supermajority standard for treaties, but retains a simple majority standard for reviewing executive branch nominations.

The Senate in recent times has started, however, to use the privilege of having your say; that is, everyone should be heard before a decision was made, as a way to change that fundamental principle in the Constitution from a simple majority to a super-

majority. We can't close debate here in the Senate without a supermajority. Even though no one has anything else to say, that power has been used to prevent a simple up-or-down vote.

Under this theory of three coequal branches of government, no one could envision that a minority of one Chamber of the legislature could, in fact, completely undermine either the executive branch or the judicial branch. That certainly was never anticipated. Indeed, the reason it was left as a simple majority is that our Founding Fathers who were writing the Constitution had experienced the challenge of what a supermajority would do. Madison said, regarding the supermajority, "The fundamental principle of free government would be reversed."

He said in Federalist Paper No. 22, speaking from the painful experience as a New York representative to the Congress that created the Articles of Confederation, that supermajority rule results in "tedious delays; continual negotiation, and intrigue; contemptible compromises of the public good."

Madison was not the only one to observe the deadly nature of paralysis to a Congress. In Federalist Paper No. 76, Alexander Hamilton lays out the nomination process in great detail. Indeed, he says he has kept the nomination power with the President and not the legislative branch to avoid the "party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly."

He then went on to argue the Senate is necessary to vet nominees for the "intrinsic merit of the candidate" and continued, "the advancement of the public service."

Hamilton states that he expects nominees would be rejected only when there were, and I quote, "special and strong reasons for the refusal."

This principle of oversight to make sure that something that is outside the bounds of reason is done by the executive branch has now reached a point of deep abuse.

Our majority leader came to the floor earlier today, and he laid out the history of how the nomination process has been bent from an unrecognizable process that neither Madison nor Hamilton nor any of our other Founders could have envisioned, a process that allows this Senate to utilize the privilege of having your say on the floor and turn it into a weapon of destruction against the legislative branch and the judicial branch.

We can take a look at how long it has taken folks to be able from the announcements and their waiting time to get a vote, such as Richard Cordray, 724 days and counting; Alan Estevez, 292 days; Jack Lew, 169; and so on and so forth.

The traditional norm of the Senate, a timely up-or-down vote with rare exceptions, is certainly missing today.

The executive branch is headed by the President, who was elected by the

citizens of the United States. In this case President Obama was not elected once, he was elected twice. He was elected with a vision, and people expect, the citizens expect, that the President will operate the Presidency consistent with implementing that vision and carry out the responsibilities of an executive branch.

This cannot be done if the folks necessary to lead different agencies or sit on different boards cannot get through the nomination process in this Senate.

For those who are passionate about believing in the vision we have, the constitutional vision, the balance of power, the coequal branches of government, we must act to remedy the deep abuses we are experiencing today.

Let me first emphasize the extensive delays. Executive nominees who are ready to be confirmed by the Senate have been pending an average of 258 days, the better balance of a complete year, more than 8 months since they were first nominated—258 days. This hardly meets the norm or the tradition of the Senate of timely consideration. This has been a prime cause of the difficulty filling executive branch slots. Not only does it make the vacancies extend for a long period of time and, therefore, dysfunction in executing the responsibilities of government, but it certainly makes it more difficult to recruit qualified folks who don't want to be held in limbo and procedurally tortured by a minority of the Senate in this fashion. This is not new. This did not start this year, but it keeps getting worse.

In that context, let's go back to January. In January, there were a series of bipartisan modest changes in the rules, and they were accompanied by a promise of comity. That is c-o-m-i-t-y, comity. Specifically, the pledge by the Republican leader was this:

Senate Republicans will continue to work with the majority to process nominations, consistent with the norms and traditions of the Senate.

What are those norms and traditions? Those are timely consideration, up-or-down votes, with rare exception.

Let's take a look and see if what has happened over the last 6 months is consistent with the norms and traditions of the Senate and let's start first with looking at the Consumer Financial Protection Bureau. Only weeks after the January pledge, 44 Republican Senators sent a letter that said: "We will not support the consideration of any nominee, regardless of party affiliation, to be the CFPB director"—February 1, 2013, just days after the Republican leader pledged a return to the norms and traditions of the Senate.

This is not within the norms and traditions of the Senate, even going back to our Founders, who pointed out that they were worried about partisan, party-affiliated differences and animosities permeating the system. They laid out a simple nomination-confirmation process about the qualifications of the individual, not about the legitimacy, if

you will, of the agency. It is a policy decision. It is a policy that has been passed in this Senate saying the Consumer Financial Protection Bureau is a valuable addition to end practices that are predatory financial practices.

We had a consumer safety group that looks at things such as keeping lead out of the paint on children's toys. That is very important, and it goes on to monitor the safety of toys and many other aspects.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. MERKLEY. I ask unanimous consent to speak for an additional 10 minutes.

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

Mr. MERKLEY. We indeed in this case are talking about an agency that will protect our families from predatory financial practices. We all know what those are. They are hidden charges on prepaid credit cards. They are exploding interest rates on mortgages, where there is a teaser rate for 2 years and then the mortgage zooms up from 4 percent to 9 percent, driving defaults. In fact, that was a major factor, not only in the loss of homes of millions of families but also a major factor in the meltdown of our economy.

What is good for the family, building successful families, is also good for building a successful economy. We had that debate, and we as a Senate approved creating this organization. Now we have 44 Senators who say they are going to destroy this agency by blocking a Director from ever being appointed. This is 100 percent outside the norms and tradition of the Senate.

Of course, that restoration of the norms and traditions was the promise made on this floor by the Republican leader just days before this letter was sent.

According to the Senate Historian, this is the first time in history a political party has blocked a nomination of someone because they didn't like the construction of the agency. Let me repeat that. This is the first time in history.

A few weeks later we had another first, the first ever filibuster of a Defense Secretary nominee. The New York Times wrote: "The first time in history that the Senate has required that a nominee for Secretary of Defense clear the 60-vote hurdle."

This is the first time in history. The irony, of course, is that the nominee was a former Republican colleague of this Chamber, Chuck Hagel. Certainly this was out of sync for the norms and traditions of the Senate.

Then we come to this spring, again, unprecedented delay tactics. A Republican former House Member called the boycotting of Gina McCarthy "an unprecedented attempt to slow down the confirmation process and undermine the agency."

Is that consistent with the norms and traditions that were promised in January? It is not.

In fact, I sit on the committee that voted Gina McCarthy out. When we tried to have the vote, we were faced with the boycott; that is, a quorum was denied because our colleague, Senator Lautenberg, was extremely sick and could not attend. Taking advantage of his illness, Republicans decided not to show up and therefore block that nomination from coming out of the committee. Only when Senator Lautenberg came in, in the midst of an extreme illness, did the Republican members attend the committee. This is part of this ongoing process of unprecedented obstruction.

Real delays involve real hurt. It is not an academic debate. This obstruction is having a real impact on people's lives.

Let's turn to the National Labor Relations Board. In a few weeks in August, there will no longer be a quorum of the NLRB. This means for the first time in 78 years there will be no referee in place between the rules for the conduct of employers and employees. That referee makes sure that illegal practices by workers don't occur and illegal practices by employers don't occur. We lose that referee in a few weeks and that, as Members of this Senate have expressed, is their goal. Again, this is unprecedented—not putting forward a policy debate over eliminating the National Labor Relations Board but instead undermining it by blocking the ability to hold up-or-down votes on the nominees.

Workers are deeply affected by whether this referee is in place. Kathleen Von Eitzen, a Panera baker who tried to organize her fellow bakers, came to Washington, DC, to talk about how they have been unable to get to a final contract and how, in the process, their members have been cut, in some cases their hours have been cut, and a whole host of other retaliatory measures. These are the things you need a referee for—to say that is not acceptable or to judge the evidence as both sides present it. That is why we need the NLRB.

How about Marcus Hedger, who was fired for taking a friend through the shop floor. It just so happened Marcus was a union leader in his shop. He asked permission to escort a friend through the floor and it was granted. Then the employer said: Aha, we got you. We can fire you because you know you are not allowed, under the rules, to escort a friend through the shop floor.

The NLRB ruled quickly, saying this was an extraordinarily flimsy pretext for firing someone because he happened to be a shop steward, and it was during the timeframe of a labor negotiation. The company was trying to send a message. They were trying to say: If you support workers organizing to fight for living wages, you may get fired, and here we have just set an example.

It is the NLRB that is the referee that says those sorts of unacceptable tactics cannot occur.

Back to the Consumer Financial Protection Bureau. It has refunded Ameri-

cans \$425 million in savings by getting rid of credit card tricks and traps.

I think it is important we fight for the success of our families. These are family values. We should not measure the success of our Nation by the size of the gross domestic product. We should measure it by the success of our families, and eliminating predatory tactics is an incredibly important piece of that puzzle that touches millions.

What we have seen is this: The pledge made on this floor by our Republican leader in January—the pledge that said we will return to the norms and traditions of the Senate for nominations—has not occurred. The Republican leader may indeed have had every good will in making that pledge, but it requires the cooperation of the entire caucus and that certainly has not occurred and we haven't heard a strong effort to abide by that pledge made in January.

So it is time to restore the norms and traditions in the Senate, where the Senate provides a check on outrageous nominations, but it is a check, not a form of paralysis. It is advise and consent, not paralyze or veto.

For those who love democracy, it has been sad to see this Chamber, once considered the premier deliberative body in the world, fall into such a State of paralysis and dysfunction. It is up to us, as Members of this body, to come forward and say that is absolutely unacceptable.

That is the debate that was started today. I applaud the majority leader who in January of 2011 strived to resolve this dysfunction through a gentleman's agreement, but within weeks that gentleman's agreement was in tatters. I applaud the majority leader for his instinct in January when he sought modest bipartisan rule changes with the promise of comity and a pledge from the Republican leader to return to the customs and traditions of the Senate. His instinct was right. We should be able to accomplish these things by restoring the social contract.

The leader, HARRY REID, has gone the extra mile and then another extra mile in seeking to adopt the social contract that held this body together, but now what we see is it has not been reciprocated. The pledges made, the promise of comity, the gentleman's agreement has not resulted in material changes in tactics employed on the floor of the Senate. So now we have to work to restore the vision of our Founders, the vision of simple majority, with timely up-or-down votes on nominations. We owe this to the executive branch, and we certainly owe it to our citizens who reelected President Obama.

I wish to address one last point; that is, it has been argued what the majority leader is proposing—that we, if necessary, change the rule or change the application of the rule in order to make this place work again—is unprecedented.

The PRESIDING OFFICER (Ms. BALDWIN). The Senator's time has expired.



Mr. MERKLEY. I ask unanimous consent to speak for 1 more minute.

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

Mr. MERKLEY. I have in my hands a document entitled "The Senate's Power to Make Procedural Rules by Majority Vote," and this lays out a whole host of viewpoints expressed in 2005 that I think would be interesting reading for my colleagues across the aisle because it was their document.

I also have a long list of cases where every other year, on average, we have changed the application of a rule in order to make the Senate function in a different way, a better way. So this is far from unprecedented.

It is time for us, together as Senators, to live up to our responsibility and restore the power to the executive branch to put their folks in place, operating under our advice and consent in the way envisioned in the Constitution.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL of New Mexico. Madam President, I come to the floor to speak about the rules issue that has come to a head in the Senate. We have seen unprecedented obstruction by the other side of the aisle. They have continually blocked nominations—and I will get into the numbers—and this is something that has been building since we came in, in this Congress. We had a debate about rules, and we didn't do the things we should have done. We should have put in place a talking filibuster. There is no doubt about it. We should have put in other rules changes. What has happened is we find ourselves in the situation of a tyranny of the minority.

What is a tyranny of the minority? The Founders talked about it. The Founders saw that if a situation was created where a minority could block the action of the Senate, then the minority would actually be governing, and that is the situation we have before us. The minority governs when it comes to nominees, and they have blocked nominees in a very significant way. I can't repeat enough that this is unprecedented in the history of the country.

The President can't get his team. What is at issue is we have a President of the United States who had a very big win in the last election. He put himself out there, he campaigned on a number of issues, and he won the election. So one would think he can now get his team in place, but he is unable to get his team in place. He tries to propose people.

For example, in talking about the Consumer Financial Protection Bureau, we have a very qualified attorney general—and I was a former attorney general a few years back—a young man the President put forward from Ohio who was very well qualified. He has not been able to get a vote. He is in an agency that is tremendously important to the middle class, he is in an agency

that is important to consumers, and he is able to do things that are very important for consumers across this Nation when it comes to bank loans, when it comes to safety issues, and all across the board. Yet we have a situation where he cannot be sworn in and do his job as a full-time appointee for that agency. This is absolutely unprecedented, and we have to tackle this issue.

What is happening with the minority side is, if they do not like a nominee or they do not like the policies the nominee stands for or they do not like the administration's policies, they prevent the nominee from taking office at all. In effect, through the minority process that is being utilized, they are determining policy.

That is what the big objection is, and I think we are going to have to address this. I am very supportive of Leader REID coming out and saying we have to address this, we have to deal with this, and I think we are going to deal with it starting today and flowing into the next week or so.

It was mentioned here recently that the Republican policy committee put out a document entitled "The Senate's Power to Make Procedural Rules by Majority Vote." I believe that document was put into the RECORD.

Earlier in the debate this document was referred to, and I just want to make sure everyone understands it is very clear, in reading this document, that at the time of April 2005 and in that period, the Republicans were making very strong arguments that we could go forward with rule changes during the middle of a session. They were pointing out that Majority Leader Robert Byrd—and we all know Robert Byrd was one of the Senators in this institution who studied and knew the rules; most people believe Robert Byrd knew the rules better than any Senator in the last 100 years—always felt we had the right, under the constitutional option, to make changes that needed to be made.

In 1977, 1979, 1980, and 1987, Majority Leader Byrd established precedence that changed Senate procedures during the middle of a Congress, and I think that is what we are talking about, something along those lines. This is a critical issue for us as we try to move forward and we try to govern.

The Democrats have a majority and a big majority, if we consider the Independents who have joined with us, no doubt about it. Yet we cannot govern because of the procedures being utilized today.

I wish to highlight a little of this unprecedented Republican obstruction. Executive nominees who are ready to be confirmed by the Senate have been pending, on average, for 260 days—more than 8 months since they were first nominated. The Senate confirmed only 34 executive nominees by the July 4 recess compared to 118 at this point in the Bush administration. There are 184 pending executive nominees.

Since President Obama took office, Senate Republicans have filibustered 16 executive nominations and two nominees, including Mr. Cordray to be the head of the Consumer Financial Protection Board, via filibuster. For the first time ever, Senate Republicans filibustered a nomination for the Secretary of Defense. As the New York Times noted, "The vote represented the first time in history that the Senate has required that a nominee for Secretary of Defense clear the 60-vote hurdle before a final simple majority vote."

That is the New York Times.

Senate Republicans continue to block the nomination of Gina McCarthy to be EPA Administrator, claiming she has been unresponsive. Mrs. McCarthy was forced to answer more questions than ever before—more than 1,100 questions—since Senate Republicans boycotted her hearing at the committee I serve on, the Environment and Public Works Committee.

Mrs. McCarthy was previously environmental adviser to Mitt Romney. She has very good credentials.

I urge my colleagues to look at what she did in New Mexico. Here you have Gina McCarthy. There is a potential for a lawsuit. It is an issue that has to do with air quality in New Mexico. She ended up pulling all the parties together through her Regional Administrator and reached a compromise where we closed down two coal-fired plants and opened in their place two natural gas-fired plants. It was considered by the Governor, the EPA Regional Administrator, and everybody as a win-win for everyone, and she engineered that from her position at air quality there in the EPA.

Another point that should be made about Gina McCarthy is Gina McCarthy is a woman who has already been approved by the Senate. She was approved in a lopsided vote and has been doing her job for 4 years.

So what are we doing that they are saying she has to be filibustered, she has to be stopped because they don't like the policies she is going to put in place. It is absolutely outrageous what is happening, and we need to rein this in. I agree Senator REID is headed in the right direction to do this.

I applaud Senator MURRAY for her good work with Senator REID and the leadership team in terms of trying to address how we govern and very much appreciate how she has tried to shape this issue and tries to always work with the Republicans on this issue. We have tried to work through these things and haven't been able to.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Virginia.

Mr. WARNER. Madam President, I appreciate the comments of my colleague from New Mexico. As a former chief executive myself, it is remarkable to me that regardless of who is the President of the United States, he or

she ought to be able to get their team in place, with appropriate oversight and review. Unfortunately, it doesn't seem to be the case in this body.

Many of the other debates we have had are important, but in my 4-plus years that I have been here, this supercedes everything else that if we could reach some resolution on, I think might go further than any other action in both lowering some of the rhetoric and lancing some of the boil of partisanship in the Senate, as well as doing more for the kind of job growth that is still so desperately needed. That is getting our fiscal house in order, getting our balance sheet in order.

We have seen some good news as the economy recovers. We have seen our annual deficit numbers go down, although I have to look with somewhat jaundiced eyes when the press is saying: Hallelujah, this year our deficit may only be \$746 billion. That is still not good enough, and the solution set we are looking for is not that far away.

I am going to make a couple comments and then ask my colleague, the chair of our Budget Committee, to once again make an offer to proceed with regular order, something that is in the backstop of this debate about rules, something our colleagues on the other side of the aisle—perhaps appropriately—beat us over the head for 3 years about the fact that we ought to have regular order around the budget.

It has now been 110 days since the Senate approved a budget, after a marathon session that went to 5 in the morning—a session that I think even our colleagues on the other side who didn't vote for the budget would agree was open and appropriate to rules and everybody got the chance to have their say and offer their ideas.

Now, for the 16th time, we are going to come and ask our colleagues: Let's abide by regular order and go to a budget conference. Let's do the hard work that is necessary to make sure we finish the job of getting the kind of deficit reduction, getting our balance sheet in order, that will allow this economy to move forward and, quite honestly, allow us to get back to regular order on issues such as appropriations bills and a host of other things. I can't speak for everyone, but people in Virginia and I imagine people in Washington State—and I see colleagues from New Mexico and Florida—and elsewhere are saying: What are you doing? Why can't you get something done?

Every day that we remain in this paralyzed state, while it may be great late-night fodder for comedians about Congress's inability to act, at some point this dysfunction erodes the underlying confidence the American people have in our institutions. That is not good for American democracy, and it is not good as well for the ability of our economy to recover.

One of the things we have seen in press reports and what is starting to seep into consciousness is the actions

that were set up in sequestration; that they don't seem to be as bad as people think. But let's remind ourselves that sequestration was set up to be the stupidest option possible, an option so stupid that no rational group of people would ever let it come to pass.

I have cut budgets as Governor. I have cut budgets in business. There is a smart way and a stupid way to cut a budget. We set up a process that was so stupid that no rational group would ever let it happen.

One of the reasons why I think our approval rating hovers around 8 percent is we didn't come together, we didn't let this budget process take place, and we allowed this sequestration to move forward.

The PRESIDING OFFICER. The time for the majority has expired.

Mr. WARNER. I ask unanimous consent for a 5-minute extension.

Mrs. MURRAY. Madam President, I ask unanimous consent for the Senator from Virginia to finish his statement, for me to have 8 minutes of morning business, and then allow our colleagues on the other side to respond.

The PRESIDING OFFICER. Is there objection?

The Senator from Florida.

Mr. RUBIO. Madam President, I don't have objection to the time they want to use. What is our order on the time until 12:30?

The PRESIDING OFFICER. At 12:30, the Senate will stand in recess.

Mr. RUBIO. I ask unanimous consent that after they are done with their remarks, I have 10 minutes. I may have an objection, and probably will, and would like to speak on that as well. I want to make sure we could have unanimous consent on that. I don't intend to keep us in longer than we need to be.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Virginia.

Mr. WARNER. I thank my colleague.

#### BUDGET CONFERENCE

I just want to point out the fact that we are now starting to see furloughs in the Federal workforce. There is no State in our Nation that is more ground zero, that is getting hit harder than the Commonwealth of Virginia with sequestration. There are real people who are being hurt.

We have talked about some of the numbers, whether it is in Head Start or NIH grants, but let me share some of the things I have heard in the last 2 weeks from Virginians.

Pat Hickman, who works at the Department of Defense in northern Virginia, says: "I'm tired of hearing, 'It's only one day,' and 'it's only 20 percent.'"

Pat is now starting to decide, because of these 11 days of furlough, whether she is going to have to start to curtail her contributions to her Thrift Savings Plan. Her retirement would be in jeopardy.

Another employee whose name didn't come forward said that if you have kids

in school, during the summertime they are in daycare. This Federal employee spends \$2,000 a month for daycare, and they are not getting a discount on these expenses that are built into their family budget. How could they have planned 1 year out that they were going to get furloughed 11 weeks in a row?

Craig Granville, who works down at the shipyard in Portsmouth, says that furloughing for the next 12 weeks will hit their expenses hard. He has a wife who is currently going for treatment for an illness and the insurance company only pays half. They have to decide do they cut back on the wife's treatment or do they go into their savings.

I have letters and comments from Virginian after Virginian urging us—begging us—to take off our Democratic and Republican hats and put the interests of our country first and foremost.

I know we have lots of differences on how we want to approach and bridge this gap. We are never going to get to bridge the gap in our differences on the debt and deficit and on the budget unless we can get to conference and try to work it out.

I say in strong support of our Budget chairman, I thank her for the great work she has done in getting a budget in a fair way, where our Republican colleagues had a chance to raise their objections. I hope and pray we will get to that conference so we can get this issue resolved.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Madam President, I thank the Senator from Virginia. There is no one in this body more passionate to do the work to get us to a balanced bipartisan deal, to put the budget deficit and the budget issues behind us, and to get our country back on track than the Senator from Virginia. I know he wants to get to a conference committee as badly as I do—not to demand that we only have our position but to work with others to find a bipartisan solution.

As he so eloquently stated, it has been more than 100 days now since the Senate did pass a budget, and we have tried now 15 times to take the next step to move to a bipartisan conference with the House. Every time we have asked, we have been blocked by a tea party Republican with the support of the Republican leadership.

I understand that for some factions in the Republican Party, "compromise" is a dirty word. That may explain why they have offered up excuse after excuse for blocking the regular budget order we are trying to work toward. They refuse to allow a conference before we get to a so-called preconference framework. They demand we put preconditions on what can be discussed or talked about in a bipartisan conference, to claiming that moving to a budget conference—which leading Republicans called for just

months ago—was somehow now not regular order, to most recently claiming we need to look at a 30-year budget window before we look at the major problems we have in front of us right now, when we can—and must—do both at the same time.

I know there are significant differences between our parties' values and our priorities. Some of us—Democrats and Republicans—think this is a reason to come together and try to reach a bipartisan deal in a budget conference now. It has been heartening to hear from Senators MCCAIN and COLLINS and many other Republicans who have chatted with me about why they believe we need to have a formal bipartisan negotiation move on this. Unfortunately, there is a small group of Senators who would prefer to throw up their hands and stall until we reach a crisis, when they think they can get a better deal.

Last week, I was home in my State, similar to most Senators, and I talked to a lot of Americans who don't understand that kind of approach. They run their businesses and help their communities and support their families by compromising every single day. They can't afford to wait to reach agreements until the very last minute, because when that happens, they have to deal with the consequences. But that is exactly what my Republican colleagues are doing to thousands of my families in the State of Washington. Because Republicans will not allow us to come to the table, the automatic cuts from sequestration are impacting everything from children who depend on Head Start to our national security. What is more, many of the same colleagues will try to tell you that sequestration is not impacting American families. As the Senator from Virginia just talked about, I can tell you firsthand that the impacts are real.

For thousands of families in my home State, these become a reality tomorrow morning. That is because furloughs for the Department of Defense employees begin this week—equivalent to a 20-percent pay cut for 650,000 defense workers nationwide. Bases in my home State of Washington are being affected, and the first furlough date at Joint Base Lewis-McChord in Washington State is tomorrow. So instead of going to work, thousands of workers in my State will go home. The 9/11 call center and the fire department will be understaffed. Airfields are going to be shuttered except for emergencies. The military personnel office is closed. The substance abuse center is closed. The Army Medical Center is going to close clinics, and even the Wounded Care Clinic is going to be understaffed.

I am reminded of one worker I met last week, Will Silba. Will is a former marine, an amputee. He works now as a fire inspector, and he told me that because of these furloughs he is going to have to get a second job. He is going to struggle with his mortgage payments.

While these furloughs are going to directly impact thousands of people and

civilian employees, the leaders at Lewis-McChord have made it very clear that the furloughs are going to hurt our soldiers. They are going to limit their access to medical care. They are going to cut back on the family support programs. They are going to make it tougher to find a job when they finish their military careers. Why? Because our colleagues refuse to work together. To me, this is unacceptable.

Because some Republicans would like to preserve the harmful cuts from sequestration despite these kinds of impacts, we have a \$91 billion gap between the House and the Senate appropriations levels for next year. If we do not resolve that gap, we are headed for another round of uncertainty and brinkmanship, another unnecessary burden on our economic recovery and the millions of Americans who are looking for work every day. Some of my Republican colleagues say they are fine with that. In fact, House Republicans are reported, right now, to be busy working on a debt limit ransom note—right now—and so far that ransom note sounds quite a lot like the Ryan budget. As you know, the budget we did pass here in the Senate was very different, but that is exactly why we have to resolve our differences in conference. That is where we come together in a public fashion and talk about our differences and work out agreements.

I believe we have an opportunity, a window of opportunity over the next few weeks to do what Americans across the country have asked us to do—compromise and confront these problems before we head back to our home States for the work period in August. We do not have a lot of time, but I am confident that if those of us who can see working together as a responsibility rather than a liability come to the table, we can get a fair bipartisan agreement.

By the way, I was very discouraged to hear just this week from some tea party Republicans—many of the same ones who are now blocking us going to conference—who are already talking now about shutting down the government in order to defund ObamaCare. Not only do they want to push us to a crisis, but they want to do that in order to cut off health care coverage for 25 million people and reopen that doughnut hole we know so much about, causing seniors to pay more for their prescriptions, and end preventive care for seniors, and the list goes on.

This is an absurd position. We should not be talking about shutting down the government. I really hope responsible Republicans reject this approach and work with us on real solutions, not more political fights. My colleagues and I are going to continue urging the Senate Republican leadership to end their tea party-backed strategy of manufacturing crises and allow us to do the work we were sent here to do and go to a conference. I urge them to listen not just to Democrats but to

many Members of their own party who want to get to a budget conference and allow us to get to work to solve the Nation's problems.

UNANIMOUS CONSENT REQUEST—H. CON. RES. 25

Today I come to the floor to ask unanimous consent that the Senate proceed to the consideration of Calendar No. 33, H. Con. Res. 25; that the amendment which is at the desk, the text of S. Con. Res. 8, the budget resolution passed by the Senate, be inserted in lieu thereof; that H. Con. Res. 25, as amended, be agreed to; that the motion to reconsider be considered made and laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appointment conferees on the part of the Senate; that following the authorization, two motions to instruct conferees be in order from each side: the motion to instruct relative to the debt limit and a motion to instruct relative to taxes and revenues; that there be 2 hours of debate equally divided between the two leaders or their designees prior to a vote in relation to the motions; that no amendments be in order to either of the motions prior to the votes; and that all the above occurring with no intervening action or debate.

I ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection? The Senator from Florida.

Mr. RUBIO. Madam President, reserving the right to object, I do not oppose going to a budget conference with the House. I think I have shown, especially in the last week, a willingness and ability to compromise on important issues—one, quite frankly, very unpopular among people supportive of my candidacy—in my time here in the Senate when we dealt with the issue of immigration. My concern is that when this goes to a budget conference with the House, they will negotiate the debt limit—an issue that I believe is so monumental it should be debated on its own merits and by itself.

So what I am arguing for is a compromise. Let's go to conference but assure everyone here that this is not a conference that is going to deal with the debt limit issue. We need to deal with that issue separately.

I ask unanimous consent of the Senator on a compromise. I ask unanimous consent that the Senator modify her request so that it not be in order for the Senate to consider a conference report that includes reconciliation instructions to raise the debt limit.

The PRESIDING OFFICER. Does the Senator so modify her request?

Mrs. MURRAY. Madam President, I will object, but let me just say this. What the Senator is requesting is that we tell our conferees before they ever get to the conference committee what they can do on a specific issue. What I offered in my original offer is to have a vote on that, which is how we do this here. The Senator is requesting not

that we have a vote but that we have a demand.

I respect the Senator from Florida. He has worked very hard, as he stated, on immigration reform. He is working now to try to get the House to pass that. At some point they will go to conference. What he is saying is that when his bill goes to conference, what he wants to do is allow any Senator on this floor to make a demand of that conference committee before they get there—not a vote, not a majority vote, but a demand from a small minority of what is going to be in that conference. We cannot agree with that.

What I have offered is a vote on that, which is what we are—a democracy. You are allowed to vote, and if enough Senators agree with that position, that is what we would direct the conference to do. But this body is not built on a demand from one Senator or a small group of Senators on a conference before we go there. We are a democracy.

So I again object to his request as he said and renew my request, which will allow a debate and a vote on that issue he is requesting, as happens in a democracy.

The PRESIDING OFFICER. Objection is heard to the modification. Is there objection to the original request?

Mr. RUBIO. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Florida.

Mr. RUBIO. How much time do I have remaining?

The PRESIDING OFFICER. Ten minutes.

Mr. RUBIO. Madam President, let me say at the outset on this debt limit issue that we have been told by everyone here that the debt limit is not going to be dealt with; they don't intend to deal with it; that, in fact, we have rules in place that prohibit that from happening. So if the intent is to say we are not going to deal with the debt limit, why not just put it in writing? Why not just agree to it? I think it raises suspicion that they refuse to take the debt limit off the table in writing in a specific motion, even though they told us that is not the case.

But I want to raise a couple of points in regard to all this debate we are having. We heard a lot of debate about the impact of the sequester on this country. I do not dispute that it will have an impact. In fact, I voted against the deal that actually gave us the sequester, and I voted against it because, while I believe deeply we need to constrain spending because we are spending a lot more money than we are taking in, about \$1 trillion a year more than we are taking in, borrowing about 40 cents of every dollar we spend in the Federal Government—for the folks visiting here in the gallery, you may be shocked to hear that. Every dollar the Federal Government spends, 40 cents of it is borrowed. When you borrow it, that means you have to pay it back with interest. That is your money.

That doesn't come from a tree. That is money taxpayers are eventually going to have to come up with. And for the youngsters here, I want you to understand it is primarily going to come from you in the years to come.

So the reason I thought the sequester was a bad idea is because that sequester is going after things that by and large are not the drivers of our debt. The drivers of our debt are certain programs that are built in a way that are unsustainable, important programs such as Medicare. I believe in Medicare. I support Medicare, as I tell anyone when they ask me about it. My mother is on Medicare. I don't want to see Medicare hurt or changed for her. But I also recognize that if Medicare is going to exist when I retire, we better start making some changes to it for future retirees, people 20 or 30 years from now. That is where we should be focusing our reform efforts.

We cannot get the other side to agree on any sort of changes. There was an effort in the House last year to try to do something very serious about that. They brutally attacked it. There was a reference to the Ryan budget a moment ago. The Ryan budget—I am not saying it was perfect, but it was the most serious effort yet in this Congress, in this city, to reform a program that is going bankrupt on its own.

I think the only thing worse than the sequester is to raise taxes to prevent a sequester because that will hurt job creation in America. The only thing worse than the sequester is not to have any spending reductions at all, which leads me to the point that was raised earlier saying that we are not going to agree to a short-term budget unless ObamaCare is defunded and that we are threatening a crisis by shutting down the government.

Let me say that one of the people who said that was me, so let me address that for a moment. Let me tell you what the disaster is. The real disaster is ObamaCare itself. In fact, it is such a disaster that the people who supported it are now delaying implementing portions of it. Just last week we were told that one of the key components of the law requiring that employers provide insurance—they are going to have to delay that by a year, conveniently until after the next election.

Here is the other thing we found out last week. I know that under ObamaCare, when you go in and say, I make so much money, you can qualify for the government to give you extra money to buy insurance. Guess what. They now admitted they have no way of verifying how much money you really make. Basically, it means people are going to get to show up and say, I only make \$20,000 a year, and get their subsidy, with no way to verify the truth about what they make.

It is not limited to that. The disaster that is looming with regard to ObamaCare impacts every single American. Here is a list of them that was re-

cently produced by the Heritage Foundation. They missed a bunch of deadlines.

Most states resisted Obamacare's call to create insurance exchanges, choosing to let Washington create a federally run exchange instead. However, a Government Accountability Office report noted that "critical" activities to create a federal exchange have not been completed and the missed deadlines "suggest a potential for challenges going forward."

That is right—you may have to go on a Federal exchange—including, ironically enough, the Members of the Congress and their staffs—and the exchange doesn't exist yet. You are going to be expected in a couple of months to sign up for something that doesn't even exist yet. That is one part of the disaster. There are many others.

The administration announced in April that workers will not be able to choose plans from different health insurers in the small business exchanges next year—a delay that [a liberal blogger] called "a really bad sign of ObamaCare incompetence."

Here is another one, the child-only plans—one of the things people were excited about. There was a drafting error in the law that actually led to less access to care for children with preexisting conditions.

A 2011 report found that in 17 states, insurers are no longer selling child-only health insurance plans, because they fear that individuals will apply for coverage only after being diagnosed with costly illnesses.

Basic health plan: DELAYED.

This government-run plan for states, created as part of ObamaCare, has also been delayed, prompting one Democrat to criticize the Administration for failing to "live up" to the law and implement it as written.

The early retiree reinsurance—it is broke.

The \$5 billion in funding for this program was intended to last until 2014—but the program's money ran out in 2011, two years ahead of schedule.

Waivers:

After the law passed, HHS discovered that some of its new mandates would raise costs so much that employers would drop coverage rather than face skyrocketing premiums. Instead, the Administration announced a series of temporary waivers—and more than half the recipients of those waivers were members of union health insurance plans.

It goes on and on. This thing is a disaster. I don't care about how you feel about it, there is an insurance crisis in America, let there be no doubt. People are struggling to find access to quality health insurance. We should deal with that, but this approach is a disaster. No matter how you feel about it, it is a disaster. It cannot be implemented in time. You don't think that is looming over our economy?

I just left a meeting with an owner of a chain of restaurants. They are worried about it. They don't know what to make of it. Why, if you ask what it is going to look like next year, they don't know. They don't know. We are in July already, folks. We are going to implement this? We are going to force this on our economy? You don't think that is a disaster? You don't think in the

real world—not in Washington or the think tanks—small- and medium-sized businesses and individuals are holding back on investing or holding back on making moves? You don't think someone who decided to leave their job, take their life's savings, and open a business because they believe so much in their dream—you don't think this uncertainty is hurting that from happening? It is.

You cannot grow your economy unless people are willing to start new businesses or grow existing businesses, and ObamaCare is keeping that from happening. That is the disaster.

Why would we fund a disaster? Why would we pay for something out of the American taxpayer's wallet we know isn't going to work? When they talk about shutting down the government and how it is going to be a disaster—ObamaCare threatens to shut down our economy. I am telling you this is a disaster. We should not fund it, and we should not have a temporary budget around here that gives money to this thing. It is a disaster, it will not work, and it is going to hurt people.

The other thing about this debt limit that I make such a big deal about—let me tell you why. We owe \$17 trillion, and that is bad, and it is bigger than our economy. Here is the worst part about it: There is no plan in place to stop that from continuing to grow. You heard right. There is no plan. This budget the Senate passed—I am glad we passed a budget—only makes it worse; it doesn't make it better.

Where is the urgency? What are we waiting for? This isn't going to take care of itself. We are not going to win the Powerball lottery and pay this thing off. When is someone going to step up and say it is time to solve it?

I have been here now 2½ years. If on the day I got elected you told me we would go 2½ years without seriously dealing with this, I wouldn't have believed you. I would have said: Look, I know it is going to be hard, but we have to do something. We are 2½ years into this, and they are saying: We are going to raise the debt limit, and we don't want any conditions. We don't want to deal with anything that fixes it.

People say: Well, the debt is something that is far off in the future. It is off in the future, but it is also happening now. Do you think when people decide to invest money to start a new business or expand an existing business—which is how you create jobs; that is how jobs are created in the private sector.

If you graduated college, went to school, got your degree, and now you can't find a job, I will tell you why you cannot find a job: The businesses that create those jobs will not create them until all of this is figured out. People do not want to risk their hard-earned and saved money in an economy that is headed for a catastrophe.

Look at what is happening in Europe now. Europe has a debt problem. You

know how they have had to deal with it? Disruptive changes in government and tax increases. If you think that stuff attracts investment in business, you are out of your mind. There isn't a chamber of commerce in the world that tells people: Come to us. Here we have high taxes and heavy debt that will make those taxes even bigger in the future.

The bottom line is that the debt limit and the fact that we don't have a solution for the debt is also the reason for the crisis. We need to begin dealing with this seriously and stop playing games. Someone has to draw a line in the sand, and I know many of my colleagues and I intend to do so every chance we get.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold that suggestion.

Mr. RUBIO. Yes.

### RECESS

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

Thereupon, the Senate, at 12:48 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. HEITKAMP).

The PRESIDING OFFICER. The assistant majority leader.

### MORNING BUSINESS

Mr. DURBIN. Madam President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

### SENATE PROCEDURE

Mr. NELSON. Madam President, I want to speak about a subject that is on the hearts of most of us now as we approach not what is a coming constitutional crisis, but what is already a constitutional crisis because this body is not functioning as the Constitution intended. The minority, under the rules of the Senate, is protected and has been.

In the early days of the Senate, there was no cutting off of debate. In the early 1900s, a level, a threshold of 67 was established in order to cut off debate. Then, after the abuses of that filibuster requirement to cut off debate in the abuses in the civil rights era, in-

deed, the threshold was lowered to what we have in the Senate rules today—60. But we are seeing that it is being abused.

Under the Constitution we have the checks and balances of the separate branches. But when a President is elected, the President is entitled to have the people he wants to advise him to be a part of his team to be confirmed. It has always been the practice under the Constitution to have, not a supermajority vote, as is required for treaties, but a simple majority vote in the approval of the nominations.

The issue in front of us is whether the President will be entitled to have approved by the Senate the people he has put forth to head the agencies and the Departments of his administration. That is what has brought us to the constitutional crisis where we are now finding ourselves ready to act.

Congress has failed to put aside political differences to find commonsense solutions not only on the issue of the approval of the President's appointments, but on so many of our Nation's pressing problems.

Let's start out with the charade that we call the sequester. The sequester is a meat cleaver approach to budgeting. I daresay in the minds of most of the Senators it was never intended to go into effect. It was the meat cleaver hanging over the head, a year and a half ago, of the appointed supercommittee that—after the initial \$1 trillion of spending cuts were made on the budget over a 10-year period, which was done—the supercommittee was to come along and work out deficit reduction with a target somewhere around \$4 trillion in total.

What was to encourage the supercommittee was this meat cleaver hanging over their heads, or guillotine hanging over all the heads that nobody wanted, which was cuts across the board without regard to programs—across the board in discretionary programs, defense and nondefense discretionary programs.

Such across-the-board budget cuts, is that the way to go about making proper appropriations decisions? Those kinds of meat cleaver approaches do real damage to people's everyday lives. In the long run, the sequester is certainly going to hurt our national defense, our national security, and our Nation's ability to compete economically with other countries. If we see these kinds of cuts continue in this ideological fashion without regard to programs, then we are going to be in serious trouble.

We can continue to have both sides of the aisle point fingers at each other, but isn't it about time we get rid of this approach to the budget—the sequester—and start talking about how we can get the job done?

Well, the ranking member of the Finance Committee is here. He is one of my dear personal friends. I believe he is very sincere, along with the chairman of the Finance Committee, to really