

take on tax reform. Are we happy with the Tax Code we have? Do we think it has much too much complication? And couldn't its streamlining—particularly with tax expenditures, which are tax deductions and tax credits, and almost every special interest in the world has their own special tax expenditure—could we not clear out a lot of them, which produces revenue, and use that revenue in order to lower tax rates and also use some of it to lower the deficit?

Well, we need to close some of those loopholes, and I am hopeful, with the leadership of Senator BAUCUS and Senator HATCH, we are going to be able to do that. But there are a lot of other things in there.

It is no surprise that I have been speaking of subsidies that go to companies, such as oil companies, that have outlived their usefulness that were given a century ago in the Tax Code as incentives to drill for oil. Do we think oil companies need those financial incentives now? What about the offshore tax dodges?

I think it is also obvious that when you look at the Medicare drug program, you know the taxpayers of this country, through their government, got a break on the cost of prescription drugs that we supply to Medicaid and to the Department of Defense and to the Veterans' Administration. But when it comes to if you have been getting that price break on your drugs through Medicaid, but you now turn 65, and you get your drugs through Medicare, the U.S. Government does not get the break, the discount on the drugs through Medicare. The very same people who were getting them under Medicaid now are getting them by Medicare because they passed the threshold of age 65—same drug, same people; the government is paying it—but the government is paying a much higher price. That could be worth a savings of \$150 billion to the U.S. taxpayer over the course of a decade.

You do the math on just these few examples I have given in this short little speech, and it adds up to well over \$1 trillion. And that is just a starter. There are hundreds of billions of dollars more that might be saved by closing some of these tax loopholes.

I think we need to keep in mind that not all tax deductions are bad. Some serve very legitimate purposes. But here we are, and we come back to the gridlock we are experiencing. We passed a budget resolution in the Budget Committee. It passed out here on the floor of the Senate. The House of Representatives has passed a budget resolution, albeit much different than ours. The normal process around here is to try to work out our differences and to do it as ladies and gentlemen with comity. But we cannot even get a motion approved in order to go to a conference committee to work out the differences between the House and the Senate budget resolutions.

So I would continue to plead with our colleagues to allow this to move for-

ward. No less than one of the most stellar Members of this body, Senator MCCAIN, has called for the naming of the conference committee. My Republican colleague who helps me lead the Aging Committee, Senator COLLINS, has called for the naming of the conference committee.

So let's do it. Let's end the gridlock on this one little thing. Let's compromise. And let's start using some common sense. If we do, you will see a chorus of amens from our fellow countrymen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

NOMINATIONS

Mr. HATCH. Madam President, last month I spoke here about the confirmation process and how the majority was committing filibuster fraud.

The leaders on the other side of the aisle, including the majority leader and the majority whip, voted for judicial filibusters more than 20 times by this point in the previous administration.

They succeeded. There were five times as many judicial filibusters at that time during the Bush administration as there have been today. Looking at executive branch nominations, those same Democratic leaders voted to filibuster President Bush's nominees to be Assistant Secretary of Defense and EPA Administrator, and twice voted to filibuster his nominee to be U.N. Ambassador. They must have thought very differently then about whether the President deserves his team. Their actions then spoke more loudly than their words do today whether they think all nominees do deserve an up-or-down vote.

The Senate recently confirmed the Directors of OMB and the CIA, the U.S. Trade Representative, the Secretaries of Energy, Interior, Treasury, State, Transportation, and Commerce this year by a collective vote of 816 to 61. That does not sound like a Senate that is in jeopardy or trouble. In fact, it does not sound like they even have a case to make to do what they have alleged they are going to do.

The Congressional Research Service says the Senate is considering President Obama's executive nominees faster than during President Bush's second term, but none of that is good enough for this majority. They not only want more, but it appears they are willing to get it by any means necessary.

According to media reports, the majority leader is being pushed by political interests to use a parliamentary gimmick to limit or abolish filibusters. In other words, his political base, especially Big Labor, wants him to put short-term partisan politics ahead of the integrity and tradition of the Senate itself. If simply saying that is not enough to show how dangerous it is, we are in more trouble than I thought.

Thomas Jefferson called the Capitol the first temple to the sovereignty of

the American people. The people established our Constitution with its separation of powers. They designed the legislative branch with an action-oriented House and a deliberation-oriented Senate. We call ours a system of government because it includes all of these parts designed to be different and yet to work together.

Many people bemoan the division and conflict in Congress, the partisanship and on and on. Yes, there will be conflict over the important issues facing our country. Men and women of different perspectives, views and ideologies and serving different States serve in Congress. But I always thought we should be of one mind about the long-term integrity of the system of our institutions.

For more than two centuries, the Senate has been designed to play its own particular part in the legislative process. Form follows function, they say. So our rules reflect our role. For more than two centuries the minority has had some basic rights in this body, including the right to debate. That right has always annoyed the majority and empowered the minority. I know that from experience, as I have been among the annoyed, just as today I am among the empowered.

The majority knows it too. A decade ago when they were in the minority they began for a time using that right to debate to defeat judicial nominees who otherwise would have been confirmed. Now back in the majority, they want to ban the very tools they found so useful just a few years ago. Now that the majority leader is done using the opportunity for extended debate, he wants to make sure no one else can use it.

Why? For one simple reason. Because they want their way every time. They think they are entitled to it, and if they cannot get it the old-fashioned way, by persuading their colleagues and the American people, then they will simply rig the rules.

This short-term power grab, however, will cause long-term damage to the Senate and to the system of government of which it is such a vital part. Do not think just because they say they are limiting it to the executive branch appointments, excluding judges, do not think that is not going to lead to all kinds of other obnoxious approaches toward the Senate.

A little dose of history provides a big dose of clarity for this debate. For more than a century the right to keep debate going belonged to each individual Senator. There was no rule at all for ending debate. A single Senator could prevent bills from passing by preventing debate from ending.

We have had a rule for ending debate for nearly a century. Today it is easier to end a debate than at any time since the turn of the 19th century—not the 20th century, the 19th century. Not only that, but the majority is using that rule more effectively today to prevent filibusters than the rule has been

used in the past. It is all there in the public record. When we vote to end debate, we prevent a filibuster. A higher percentage of votes to end debate has succeeded in recent Congresses than in the past.

To top it off, just a few months ago, the Senate overwhelmingly adopted two new standing orders and two new standing rules giving the majority even more power considering nominations and legislation. But using the rules to their advantage is not enough for the majority. Gaining even more power through those new orders and rules is not enough. Now the majority threatens to use a parliamentary maneuver to weaken or abolish the right to debate itself.

But as I said, the Senate rules reflect the Senate's role. Changing those rules, especially in the way the majority is talking about, means changing the Senate's role in our system of government. A few partisan victories simply cannot be enough to justify that.

The minority leader has faithfully reminded us of the majority leader's past promises not to change the Senate's rules or procedures except through the process provided for in the rules. On January 27, 2011, the majority leader said: "I will oppose any effort in this Congress or the next to change the Senate's rules other than through the regular order." My question is this: When the majority leader said: "I will oppose," did he really mean "I will lead"?

The integrity of this institution and the system with which it is a part should matter more than the politics of the moment. If our commitment to this institution and to keeping our word no longer matter, we will be breaking the trust of the American people and failing in our duty to them.

This must not happen. The Senate is a venerable institution. If the majority continues to go down the road they are going down, it is going to be much less venerable, and it is going to be a broken institution. Keep in mind, their decision, if they do choose to do this, will work against them someday.

I have to say that I am very concerned because I believe that not only is it wrong, what they are going to do, but it is based upon false premises. When the majority leader says we have filibustered hundreds of times, that is totally inaccurate, especially when the leader calls up a bill and files cloture immediately just to make it look like we are filibustering. We are fast moving away from being the most deliberative body in the world to one that is just run by the majority, similar to the House of Representatives.

I hope some of the wiser Senators on the Democratic side will prevail. Right now it does not look like they will. But I will tell you this, if we go down the road that the majority leader is talking about, this institution is going to be dramatically changed for the worse.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I thank the Senator from Utah for his thoughtful remarks. I have been trying to think of a way to put in context what is at stake because the majority leader said in his remarks today: We have changed the rules 18 times. True. We have changed the rules a lot. But we are not talking about changing the rules of the Senate. We are talking about changing the Senate.

That is what the proposal is, changing the Senate from an institution that protects minority rights by requiring 60 votes out of 100 on major matters of importance instead of a majority of votes. You know we grow up and we go to first grade and we learn that the majority wins. So we get that ingrained in ourselves as we grow up in America. It is a good principle, the majority wins. It is a way to resolve disputes and work things out.

But from the very beginning of our country, our most thoughtful observers and visitors have looked at our country and said: But a democracy needs some protections for the minority, for the people with a minority view.

I have mentioned on the floor before that I have been reading Jon Meacham's book about Thomas Jefferson, about the conversation they had after dinner on February 15, 1798. Jefferson wrote about what Adams said to him. Adams said:

No Republic could ever last which had not a Senate. Trusting the popular assembly for the preservation of our liberties is unimaginable.

"Trusting a popular assembly for the preservation of our liberties." What did he mean by that? What he meant by that is that the passions in our country—and they particularly happen that way today because of the Internet—can suddenly grow very strong. They happened back at that time in France with the French Revolution, where the population got excited and began to behead people in connection with the French Revolution.

So popular passions can run strong. Our Founders said: We want a House of Representatives that reflects those popular passions, which is why when you go over to the House, they have a Rules Committee. Whoever wins the House by one vote gets nine of the seats and whoever loses gets four of the seats to make it clear that the party that has four of the seats does not have anything to say about anything, so they can bring it up on Monday and pass it on Tuesday.

That is what a popular assembly can do. So Adams was saying to Jefferson: We need another body. We need a Senate that is not so responsive to the popular passions. President Adams and President Jefferson said at the beginning of our country that they did not believe a Republic could stand without such a Senate. That is what they said then. Our most famous visitor to the United States was Alexis de Tocqueville, a young Frenchman who came in the 1830s.

He wrote a book, "Democracy in America," which is probably the best book ever written about democracy in America. He said in this that there are two great dangers he saw in our future democracy. This is when it was very young. One was Russia. That was a prescient comment. But the other was the tyranny of the majority. That is what de Tocqueville said.

The great danger to our democracy is the tyranny of the majority. That means a majority can run over you with a one-vote margin. What does that mean today? Let's say you care about abortion rights. Let's say you care about gay rights.

Let's say you care about climate change. Let's say you didn't support the war in Iraq, you didn't support the war in Afghanistan. Let's say you don't like government snooping, but the majority does. The majority has a view that is different from your view, so they can run over you—in the Senate they can't because they will have to persuade at least 60. It will take some time to do it, and it doesn't always work. You have to stop and think about any issues.

The House can say: No secret ballot in a union election, and they can pass it in a day. It will come to the Senate, and we will say: Let's think about it. We will think about it even if the Democrats are in charge and they are in favor of no secret ballot in a union election because we protect the rights of working men and women across the country who may be in the minority. But we have to stop and think about whether we want to abolish the secret ballot in union elections.

What the majority leader is proposing doing next week is not just changing a rule, he is changing this institution so that whoever has a majority of one can do anything they want to do, anytime they want to do it, and can run over any minority. It doesn't make so much difference that you run over a person in the minority in the Senate—you know, we are just individuals. But what about the views we represent? What about the views of the farmers in North Dakota, mountaineers in Tennessee, or the civil rights workers in Alabama? What about the people in the 1970s who opposed the Vietnam war? The majority? The majority ran over it.

People who are accustomed to being in the minority know the advantage and the importance of having protection of minority rights. They know—and they have studied American history—that the chief defender of minority rights in the history of our country has been the Senate. This is what the majority leader proposes to change. He proposes to make this place like the House, where a freight train can run through it overnight and change abortion rights, change the war attitude, change civil rights, change environmental policy. One vote can do it. Run the train through the House. Run the train through the Senate. Today it

might be a Democratic train. Tomorrow it might be the tea party express.

Our friends on the other side might wish to think about that. I have some very creative colleagues over here. I will bet they could come up with a pretty good agenda of things we would like to do if we had 51 votes and we could do it anyway.

This is not about a rules change. This is about changing the nature of a Senate that John Adams, Thomas Jefferson, George Washington, and the Founders of our country created to be an alternative to a popular assembly and that every majority leader in our history has, in the end, supported in this way.

We should not take this lightly—especially if you are an American person who has an unpopular view. If you feel as though you are in the minority, if you feel that a majority might not agree with you, might even run over you, you do not want the Senate to suddenly be a place where a freight train could run right through it overnight.

You may say: Well, we have the President and the White House.

You may. You do today. You might not tomorrow. You might not tomorrow.

When I came to the Senate 10 years ago one party had both the Senate, the House, and the Presidency. What if we were 10 years ago and we could run a freight train through the House, to the Senate, and send it down to President Bush? We might say that no State in the country—every State in the country must have a right-to-work law. We believe in right-to-work laws. We might have new rules on public unions. We might have different ideas on abortion. We might have different ideas on climate change. If you are in the minority, you wouldn't be able to stop us. You wouldn't even be able to slow us down for a good conversation. We could just run right through town.

Nearly one-half of this body is in its first term. More than half of my Democratic friends have never been in the minority. I have been in the minority in a variety of ways in my lifetime, and I want some protection—more than just from the popular assembly that might run through.

That is why I said this morning that I hope very much that the Democratic leader will accept the request from those of us on the Republican side for all of us Senators to meet together in the Old Senate Chamber where we can meet privately, where we can talk face-to-face.

We can say: We need to understand how in the world the Democratic side could want to change the character of the Senate in this way when in 2 years they could be on the other side. What would make you so angry that you would want to do that?

If you would say to us, you have been filibustering our nominees, we would say to you, I guess you know that none of your nominees have ever been de-

feated by filibuster. I guess you know that—except for two circuit judges. And you started that because you did five of ours.

You will say: Well, you have been delaying our nominations.

We will say: I hope you know that the Congressional Research Service and the Washington Post say that President Obama's Cabinet nominees have been moving through the Senate more rapidly than President Bush's did and President Clinton's did in their second terms. I hope you know that.

You may say: But you have been holding people up for years.

We will reply: I hope you will look at the Executive Calendar.

It is on everybody's desk here. This is the list of people who can be confirmed in the Senate. How do they get on the Executive Calendar? They come out of committees. Who controls the committees? Democratic majorities. If there is someone who hasn't been confirmed, put him on the calendar. It is your committee that can do it.

Once they get on the calendar, how do they get confirmed? Only one person can manage that schedule—the majority leader. All he has to do is say: I move the nomination of Jacob J. Lew, of New York, to be U.S. Alternate Governor of the International Monetary Fund. He has been on the calendar since April 16, 2013.

You may say: There is an objection to that.

We will say: So what? The majority leader can bring it up, and under our rules we can ask for a 60-vote vote on Mr. Lew to the International Monetary Fund.

He is already in the administration, so that probably wouldn't happen, but let's say it did. The majority leader can bring it up on Monday. We would vote on Wednesday. He would get 60 votes, and then he would be confirmed. That would take one of the 24 people off of this Executive Calendar.

You might say: Well, they have been waiting for years.

We might say: Wait a minute, I have got it right here. The one who has been waiting the longest came to the floor February 26, 2013. That was 4 months ago. There is no one here who has been waiting longer than 4 months, who has been here waiting for us to do something about it. The only one who could move somebody off this calendar to a vote is the majority leader sitting right over there, so what are you talking about?

This is what we would say to you.

You must be angry about something else or you wouldn't be thinking about changing the character of the whole Senate because no one has been denied their seat by filibuster except a circuit judge, and you set the precedent for that. There is no one left to confirm except these nominees for the National Labor Relations Board that President Obama made unconstitutionally on January 24, 2012.

The Republican leader said: You have a Labor Secretary who is controversial.

We all concede that, but the majority leader hasn't moved that we have a vote on him. He has been reported since May; he has been sitting here since May. The majority leader could have been brought him up.

There is a lady nominated for the Environmental Protection Agency. Bring up her nomination. Let's vote on it. There are a couple of other controversial nominations, but all we have to do is vote—except on these unconstitutional nominees.

What do we do about them? Let's make clear what happened to the National Labor Relations Board. In December of 2011 the President sends us two nominees to the National Labor Relations Board. This is the way it is supposed to happen. Their papers then come over to the Health, Education, Labor and Pensions Committee. Senator HATCH used to chair that. I am on that committee now as a ranking member. Before the papers from the White House even get to the committee, the President recess-appoints them. In other words, he used his power to appoint these persons to the NLRB during a recess when the Senate was in session. How do we know it was in session? It was in session, in a pro forma session, which is a device invented by the majority leader, Senator REID, when George W. Bush was President to keep President Bush from making recess appointments.

President Bush didn't like that, these 3-day pro forma sessions, but he respected it.

He said: Our Founders didn't want a king. They created separation of powers. That means checks and balances. I am the President, but I can't do everything. There is Congress over here, and there is a bill of rights over here.

President Bush said: I don't like what Senator REID did. He created these pro forma sessions so I can't make a recess appointment, but I will respect that.

Senator REID has a pro forma session when President Obama is in, and President Obama doesn't respect it and appoints two people. They are still there. The Court of Appeals for the District of Columbia has ruled that unconstitutional, as has the Third Circuit Court of Appeals—two of the highest courts in the land—and they are still there. They are still there making cases unconstitutional. They have decided 1,031 cases, all of which will be subject to being vacated if the Supreme Court agrees with the Federal courts. We cannot ignore that in the Senate if we wish to preserve the principle of checks and balances in the United States.

I mentioned at the beginning that I like to read history. I said this on the Senate floor, and I will read it again and then conclude because I know other Senators are here.

I was reading Jon Meacham's book about Thomas Jefferson, which I mentioned, and John Adams and Jefferson and how changing the Senate, not changing the rules—but if you change

the Senate rules in this way, that means that the majority, on any day, any year, could come through and do anything it wants do.

They might decide: We don't like the gas in North Dakota, or we don't like the corn in Tennessee. So we are going to change the rules so we can have an advantage that 51 of us can do something about.

They could do that any day. Do it now; do it then.

I mentioned that history. I mentioned de Tocqueville's history. But here is the last piece of history I will mention once more. This is chapter 7 of Senator REID's book in 2007. Chapter 7 is entitled "The Nuclear Option." I had just come to the Senate. He talks about me in this chapter and gives me some credit for the gang that was formed to preserve the Senate at the time when another majority leader was trying to change the character of the Senate.

I see the distinguished majority leader, so I will defer to his comments. Maybe it is appropriate for me to read them. Senator REID wrote in 2007:

Peaceable and productive are not two words I would use to describe Washington in 2005.

I just couldn't believe that Bill Frist was going to do this.

The storm had been gathering all year, and word from conservative columnists and in conservative circles was that 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 Senator REID's book. It is an excellent book, and I appreciate being mentioned in it.

Senator REID continues:

And once you opened that Pandora's box, 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. And that, simply put, would be the end of the United States Senate.

I believe that. I believe it would be. It is not a mere rules change. Anytime this body changes its rules in the middle of a session without following the 67-vote rules cloture requirement, anytime it does that, it doesn't matter what it is for, it could do it again for a matter of precedent. If it does it for judicial nominations, the importance of the change is not whether it is a good idea to have an up-or-down vote on judicial nominations, the importance of the change is that with 51 votes you can do anything you want at any time. That, in de Tocqueville's words, in his foresight and his prescience in the 1830s, takes away from the people of the United States their greatest protection of their liberties because it encourages the tyranny of the majority.

I yield the floor.

The PRESIDING OFFICER. The assistant majority leader.

Mr. DURBIN. Madam President, I have great respect for the Senator from Tennessee. He is my friend. We have worked together successfully and I

hope we will in the future, but I would take exception to his conclusions about the current status of the Senate.

I have been in the Senate—now my 17th year. I have seen this institution change dramatically—dramatically—in 17 years. We have faced more gridlock, more wasted time than I ever imagined could occur in this great institution. It has become commonplace for us to face filibuster after filibuster after filibuster.

People at home who would turn on C-SPAN to watch the Senate Chamber would have to get close to their television screens and look to see if there was any evidence of life on the floor of the Senate. Are those people actually moving? Are they awake? We go on for 30 hours at a time doing nothing around here. Why? Because we are facing a record number of filibusters from the other side of the aisle.

Time and again, when we have important issues come up, they ground to a halt for 30-hour periods of time. We are lucky to do one or two things of substance a week. Oh, there are exceptions. A couple weeks ago we did an immigration bill. I thought it was one of our better moments. But it was a rare moment in the Senate.

Too often now we are facing filibusters on the President's nominees. Make no mistake, President Barack Obama won the election on November 6 last year. Some on the other side of the aisle are in complete denial of that reality. Winning that election, this President has a responsibility to lead this Nation. He wants to put together a team to lead. He brings the names to the Senate for confirmation, but time and again they are facing filibusters from the Republican side of the aisle.

There is one that even precedes the last election. Richard Cordray, who was Attorney General of the State of Ohio—an extraordinarily gifted public servant—was chosen by President Obama to head up the Consumer Financial Protection Bureau. This is the only consumer protection bureau in the Federal Government. It is an important agency. We created it with the Dodd-Frank financial disclosure reform bill. For more than 2 years—more than 2 years—Mr. Cordray's nomination has been held on the floor of the Senate by the Republican minority. That is unacceptable and it is fundamentally unfair.

No one has ever raised a question about this nominee's competence or about his integrity. Yet they will not approve him because they do not like the notion of a consumer protection agency. That is it. So to stop the agency from functioning they are going to stop this appointment by President Obama—for 2 years.

The National Labor Relations Board sits down in judgment of labor practices across America for the safety of our workers, the organization of workers. It is an important agency. But in the words of former Senator Dale Bumpers, there are some on the other

side of the aisle who hate the National Labor Relations Board like the Devil hates holy water. They do not want to see it exist, but they can't abolish it. They know that. So they stop it from having a functioning majority. They stop nominees the President submits to fill the vacancies at the National Labor Relations Board time and time again.

The same thing is true when it comes to the Bureau of Alcohol, Tobacco, Firearms and Explosives as well. This is an agency opposed by many in the gun lobby. So since the time we have said that agency shall be filled by senatorial appointment, there has never ever been a person appointed.

It is the approach of those on the other side of the aisle to stop agencies from doing their work. This has to come to an end. I don't want to see this happen in the Senate, this confrontation over rules, but I don't want to see the current situation continue either.

Earlier this year Senator HARRY REID, the majority leader from Nevada, met with the Republican leaders, sat down and worked out a bipartisan agreement to avoid what we are facing right now. He was criticized by many Democrats who said: Come on, Harry, they are just leading you along; they are not going to work with you. You will find out, if you don't change the rules of the Senate, you are not going to get the job done.

But HARRY REID said: I would rather try to do it on a bipartisan basis by agreement. He made that effort, and it didn't work. Today we find ourselves in the situation with key executive appointments being stalled and held up.

Listen to this: Gina McCarthy was nominated by President Obama to head the Environmental Protection Agency. What is her background? Her background was serving as head of the EPA in the Commonwealth of Massachusetts—the State of the Presiding Officer—under Governor Romney. She was Governor Romney's cabinet official for the EPA in Massachusetts. She not only has credentials, she is clearly bipartisan in her approach. So her name came before the regular Senate process. What did the other side do? They submitted a few questions for her to answer. No, not just a few, they broke all Senate records. They gave her a list of 1,100 questions to answer before they would consider her nomination. That is what we are up against—clear tactics to delay and stall even good people from serving, holds on nominees that go on indefinitely. These sorts of things have to come to an end. If we are going to end the obstruction in this Senate, if we are going to give to the President the power and the authority to lead this Nation, as he was elected to do, the Senate can no longer stand as a blockade and obstruction to that exercise of authority granted to the President by the people of the United States of America. That is what this is about.

A number of my Republican colleagues have reached out to me in the

last few days saying: Is there a way to avoid this? There is. There is. If we come to the point where we can sit down and work this out together, resolve these nominees, all the better. It would be a good day for the Senate if it could be achieved. But the notion we are going to walk away from these Presidential nominees or other key nominees in the future isn't fair. I invite my Republican colleagues to vote no if they disapprove of the President's nominees. That is their right and it is their duty. But to stop the Senate from even coming to a vote on these nominees has gone on for way too long.

I urge my colleagues to try to find some way to resolve this issue. But if we can't, let's end the obstruction in the Senate and make sure the rules reflect the reality that a President should have the executive appointments he needs to lead this Nation.

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

The PRESIDING OFFICER (Ms. WARREN). The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. CORNYN. Madam President, I know we have been talking about the nominations process here on the floor and in caucus meetings, but I think it is worth reviewing the facts and comparing President Obama's nominees to how nominees of President Clinton and President George W. Bush have been treated, because I think there is broad misunderstanding. And, of course, when you don't know what the facts are—or the facts you truly believe in are wrong—then you are going to reach the wrong conclusion.

I think a fair look at the facts will demonstrate that President Obama and his nominees have been treated more than fairly. As a matter of fact, 1,560 nominees of President Obama have been confirmed during the 4½ years he has been President, and 4 have been rejected. That is not a bad ratio, 1,560 to 4.

When you start looking at how long it has taken for the President's Cabinet nominees to be confirmed, President Obama's Cabinet nominees have waited, on average, about 51 days from the time they were nominated until the time they were confirmed. For President George W. Bush it was 52 days, and for President Bill Clinton it was 55 days. So certainly President Obama has nothing to complain about, at least relative to President George W. Bush and President Clinton in terms of the amount of time it has taken for his nominees to be voted on by the Senate.

As far as judges are concerned, there have been 199 of President Obama's nominees confirmed to the U.S. District Court; only 2 of them have been defeated. That is a 99-percent success rate, which I think is pretty good in anybody's book.

President Obama has had 28 judges at the district court, circuit court, and other article III courts, so 28 for President Obama and 10 for President George W. Bush at this same point in their Presidency.

Someone once said that facts are stubborn. But if you acknowledge the facts, it is hard for me to understand where this sense of outrage and urgency comes from with regard to the President's nominees.

Indeed, the renewed sense of urgency of our colleagues across the aisle to change the longstanding rules of the Senate is based either on a misunderstanding of the facts or—I am sorry to say—willful ignorance is the only other alternative.

So this is a manufactured crisis with no grounding in objective reality. That is about the nicest way I can say it. The facts show that President Obama's nominees have moved through the Senate at a pace quicker than his predecessors.

So what about the nominees to the National Labor Relations Board? These are a special case, because the Circuit Court of Appeals in the District of Columbia found that the President exceeded his constitutional authority to make an appointment to these NLRB positions in a reported opinion from the court. But—this is important—it wasn't because Congress or the Senate denied the President his choice for these NLRB appointees. In fact, the President nominated them on December 15, 2011, right before Christmas. So the President nominates them right before Christmas, on December 15, 2011, and the President recess-appointed these same nominees on January 4, 2012.

What was so astonishing about that is the paperwork for the nominations hadn't even made its way over to the Senate, and the committee of jurisdiction had not even had an opportunity to have a hearing on these nominees. But in spite of that, the President sought to circumvent the advice and consent function for the Senate that is written in the U.S. Constitution and make what he called a recess appointment.

Another notable fact about that is the President himself decided—not the Senate—when we were in recess, leaving the Court of Appeals, when they reviewed this recess appointment and holding it unconstitutional, to say there is no real difference between what the President did in terms of determining the Senate was in recess and deciding to do it while we were breaking for lunch, and held that it was not constitutional. So Senators were not even given a chance to review his nominees to the National Labor Relations Board, much less block them.

After the court ruled these appointments unconstitutional, the President renominated them this past February. They were reported out of the committee in May, and due to the inaction of the majority leader—who is essen-

tially the traffic cop for the Senate floor—they haven't even been put up for a vote by the majority leader.

This is another important fact that I think most people don't fully appreciate. If I wanted to propose a nominee, I wouldn't have any standing to do so. It is the majority leader of the Senate, representing the majority party, who is the one who determines when these nominees will come up for a vote. So to say that somehow it is the minority's fault these individuals haven't been put up for a vote completely distorts how the Senate operates and is a disingenuous approach, to say the least.

We should recall that Republicans and Democrats came to a genuine compromise on the matter of nominations at the beginning of this Congress and a deal was struck: In exchange for Republican support, the majority leader gave his word here on the Senate floor that he would not attempt to change the Senate rules other than through regular order.

What that means, as the distinguished Senator from Kansas, the ranking member of the Rules Committee, knows, is going through the Rules Committee and coming to the floor, with 67 votes, to change the Standing Rules of the U.S. Senate. So the majority leader gave his word that he would not try to invoke the so-called nuclear option—which we are now threatened with—but would, rather, seek to change the rules through the regular order, which would require 67 votes on the Senate floor.

As it turns out, Senator REID is apparently willing to go back on his word and is now poised to break the rules of the Senate in order to get his way, in order to change the rules.

We have questioned many of our colleagues about, Why would there be such an extraordinary power grab and breaking of one's word when it comes to how the rules changed, and wondered, what is the rationale for this?

When we have gone through the same facts I described earlier, which show President Obama's nominees have been treated at least as fairly—or even more fairly, one could argue—than President Clinton and President George W. Bush, our Democratic colleagues have said, Well, this is a narrow, modest change that would only apply to nominees to positions in this administration.

That is not the way the Senate works. If you break the rules in order to change the rules, in this instance, there is a slippery slope, to say the least, to extend this same practice not only to executive nominations but also to Federal judges and to ordinary legislation, which would allow the tyranny of the majority and deny the minority an opportunity to influence ordinary legislation or to make sure its voice was heard when it comes to nominees. So the argument that this is some sort of a narrow fix designed to break some imaginary logjam with regard to this administration's executive nominees is false.

The fact is, if the majority leader goes through with this nuclear option, as it is called, he will have set a new precedent in the Senate—one that says it is permissible to break the rules of the Senate at any point simply to get your own way, if the majority has the gumption to do it.

I hope the majority leader is aware of the magnitude of this decision. Even more importantly than that, I hope Members of the Democratic caucus understand what this means.

I have been here long enough to have been in the majority and the minority. I can tell you that being in the majority is a lot more fun. But I can also tell you that majorities and minorities are fleeting. The shoe will be on the other foot. It is simply shortsighted and, I believe, an abuse of our process to try to jam these nominees through based on some manufactured and imaginary crisis and change the Senate as we know it forever.

I hope the majority leader understands the consequences will forever alter the nature of this institution—and not one based on just the rules but based on the relationships that are so important to getting anything done here.

We all understand the rules are important. But fundamentally, the way the Senate operates—regardless of whether Republican or Democratic, regardless of where we come from—is your word is your bond. We have to be able to believe it. No matter what their political differences may be, when colleagues across the aisle give their word, you have to be able to depend on it. And if we can't depend on your word and we can't depend on the majority leader's word when he said he won't invoke the nuclear option, it forever undermines the important relationship and bonds of trust and confidence we should be able to have in this institution.

Just to go over a few other short points:

According to the Congressional Research Service, the Senate is considering President Obama's executive nominations faster than any other recent President. I talked about that recently. But here are some of the President's Cabinet nominees who have been confirmed recently:

The Energy Secretary, confirmed 97-0. The only reason we had to vote on it is because the majority leader finally decided to put that nomination on the floor. It was unanimous, 97-0. Everybody who was here voted in favor of that nomination.

The Secretary of Interior was 87-11; Secretary of Treasury, Jack Lew, 71-26; the Office of Management and Budget, 96-0; Secretary of State John Kerry was confirmed 94-3—and he was confirmed only 7 days after the Senate got his nomination; the Administrator for the Centers of Medicare and Medicaid Services was confirmed 91-7; the Chair of the Securities and Exchange Commission was confirmed by voice vote.

There wasn't even a recorded vote. That is essentially a unanimous decision of the Senate; Secretary of Transportation, 100-0; Secretary of Commerce, 97-1.

It is worth recalling some of the words that were spoken by different Members of the Senate, because this is the kind of thing that will come back to haunt you if you flip-flop and take a different position later on.

This is Senator HARRY REID, December 8, 2006:

As majority leader, I intend to run the Senate with respect for the rules and for the minority rights the rules protect. The Senate was established to make sure that minorities are protected. Majorities can always protect themselves, but minorities cannot. That is what the Senate is all about.

Then there is the majority whip Senator DURBIN. This is April 15, 2005:

Those who would attack and destroy the institution of the filibuster are attacking the very force within the Senate that creates compromise and bipartisanship.

Well, if that is true—and I agree it is true—why in the world would any Senator vote to destroy the very force within the Senate that creates compromise and bipartisanship, particularly when we are making decisions here that affect 319 million Americans.

Then there is the President of the United States when he was in the Senate, April 13, 2005. Then-Senator Barack Obama said:

If the majority chooses to end the filibuster, if they choose to change the rules and put an end to the democratic debate, then the fighting, the bitterness, and the gridlock will only get worse.

I realize we are passionate about our positions on the various issues that come before the Senate, and that is entirely appropriate. We all have convictions about these important issues. But this is the only place perhaps left in the country, I believe, where we can actually debate these in an open and responsible way and be held accountable by the people who send us here—in my case, 26 million Texans.

But if we are willing to engage in this sort of shifty behavior, if we are willing to break our word in order to get momentary political advantage, then I think the public's confidence in the Senate is going to be completely undermined, and we will have lost our effectiveness. Also, perhaps just as significantly, the very bonds of trust that are so important in order to get things done around here will have been broken.

For what? For a temporary advantage over five or six or seven executive nominees. I daresay if Senator REID had put these nominations on the floor, we would have seen the vast majority of them confirmed a long time ago. The only reason they were not is because he chose not to do so. What he has done is to put them on the floor now, in this period of time before the August recess, to create a manufactured crisis so he can then invoke the nuclear option and somehow convince Members of his

own caucus that they ought to be party to breaking the Senate rules in order to gain temporary advantage. It is incredibly shortsighted, and I think it will exacerbate the gridlock and the divisions here rather than help us try to find ways to build consensus and work together in the best interests of the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Madam President, thank you for being able to maintain order in this very crowded Chamber.

It should be a crowded Chamber. It is not. I say it should be because this should be a required debate. As a matter of fact, we should have had the debate.

I am the ranking member of the Senate Rules Committee. The distinguished Senator from Texas just pointed out if we went to regular order, we would be having a meeting of the Rules Committee, having a very interesting debate, a very educational debate. I think especially for the class of 2010 and the class of 2012 on the majority side, who did not have the advantage of listening to Bob Byrd's lecture to every class that came in, his sermon to every class that came in—we all became born again to our responsibilities as Senators, seeing the light with only his advantage of being both in the majority and the minority. I regret that is not the case. I regret we are not in the Rules Committee.

I rise, like the distinguished Senator from Texas and others who have spoken about this, our leader, Senator ALEXANDER in particular, giving us a real history on what is going on here or what is not going on. We are trying to discuss the so-called nuclear option that the majority leader reportedly wishes to employ.

We are apparently brought to this point as a result of the leader's frustration. I was here when, obviously, he was simply frustrated with the pace of the Senate and how the Senate operates. This really comes down to the NLRB and the appointments to the NLRB and the fact that two courts found these appointments were illegal. That is what our side objects to. It is not especially to the appointments.

Apparently, we are going to have a cloture vote on it, and apparently the nuclear gun is cocked and ready to be pulled. There is a country western song, "Don't take your guns to town, son. Leave your guns at home." HARRY, don't take that nuclear gun to this body. Take it back to Searchlight, NV. Put it back in its holster if in fact the nuclear gun has a holster. That would be my advice.

I would say this about the majority leader. I have known him for a long time. We worked together on the Ethics Committee—and I mean we worked together. As majority leader I have had a good relationship with him. He has a good sense of humor. Sometimes that doesn't show, but he actually does.

I remember one time he was conducting a mini-filibuster. I don't remember the issue. I was the Acting Presiding Officer. I was listening to him talking about how rabbits were eating the cactus in front of his home in Searchlight, NV; whereupon I took the floor and we engaged in quite a colloquy about rabbits and cactus and not to sit on cactus. There are a lot of cactus in the world.

This is probably the biggest one we are attempting to sit on, and I just don't think it is a good idea.

The majority leader was a boxer. He was a good one. His hero is Smokin' Joe, Smokin' Joe Frazier. So when I talk to him, I call him Smokin' Joe. My appeal to him, if he is listening—he probably isn't, but if he reads about this, or if his staff tells him, tell him your old friend from the Ethics Committee had some advice. Smokin' Joe used to wait until the late rounds. He was in better shape. But he knew when to hold them and when to fold them. He was a great champion.

We do not need to go down this road. We really don't need to go down this road. Apparently, the majority leader has determined that—and this is my view—he will have to destroy the Senate in order to save it.

Those are pretty strong words. Those are harsh words, but I intend them to be. We should not be confused about this. By breaking the rules to change the rules the majority seeks to destroy what has made the Senate great, unique in the history of the world. I am repeating the advice we all got from Senator Byrd, the institutional flame of the Senate. Again, every time a new class came in, he would give his sermon or his lecture or his advice or his counsel, and we all took it, regardless of whether we were Democrat or Republican.

The Senate has always been the one place where all Americans could be assured they would have a voice. Every American, no matter what State they happened to live in or what political party they belonged to, knew they would be represented here. Kansas, Massachusetts, wherever; they knew they would be represented. Minority views were respected. Even if your party was not in power, you still had a voice.

Unfortunately, if you pull that trigger on that nuclear gun, the majority will abolish that. If you take that step, that is surely going to lead to complete control of this institution by the majority. That has been predicted by virtually everybody who has spoken, and I intend to quote a lot of majority leaders and a lot of people in the Senate on the Democratic side who have pointed this out.

I know some on the other side, especially those who have never been in the minority, will seek to minimize the import of what they are doing. Oh, it is just a small change. They will claim what they are trying to do is very limited, applying only to executive nominations.

I wish I had a chart. But if you look at the difference of 68 percent on civilian nominations that were confirmed in past administrations in the 106th Congress, and you are talking, 68, 72, in that neighborhood, and then you move clear up here to the 112th Congress, and President Obama is 82 percent, 86 percent—what is the deal? Other than being upset about the NLRB.

Make no mistake. The change itself will be less important than the manner in which it is imposed. Let me repeat that. The change itself will be less important than the manner in which it is imposed. If the majority decides to write new rules with a simple majority vote, regardless of the issue, ignoring the existing rules that require a supermajority to achieve such a change, it will put us on a path that will surely lead to total control of this body by the majority.

As of today there is only one House of Congress where the majority has total control. The majority wishes, apparently, now, there were two—or there will be two.

We do not have to wonder what the Senate will become if they get their wish. We only need to look to the House of Representatives. We will become the Senior House. I don't know about the Upper House or the Lower House—perhaps we will be the Upper House—but we will become the House.

I know that doesn't mean much to many of my colleagues who have never been in the minority or served in the House. I served as an administrative assistant to a wonderful House Member for 12 years and was in the House for 16 years. I have the privilege of now serving my third term in the Senate. I have been in the majority and I have been in the minority. The Senator from Texas is surely right, the majority is better.

Many of you folks who should be here have never served in the House. Many of you have never served in the minority. I have done both, as I have indicated. Let me explain what it means to serve in the minority in the House to those who have never had this wonderful privilege.

In the House, no bill comes to the floor without a rule. The rule governs the length of debate and the amendments that will be considered. If you want to even speak on the bill, you have to get the bill manager to give you some of the very limited time available under the rule. If there is not enough time, you will not be able to even speak on it.

The majority in the House writes the rule, and they decide how much time they will allow. The rule also determines what amendments will be considered. If the rule does not allow for consideration of your amendment it will not be considered, it will not be debated, and it will not be voted on. The majority in the House decides what amendments will be considered.

If you are a member of the majority, they might allow consideration of your amendment—if you are in good stand-

ing with the Rules Committee. If you are a member of the minority, you can forget about getting a vote on your amendment. If the majority does not want to allow it, it will not happen. As a member of the minority there is nothing that you can do about it.

I know about this. I remember when I first went to the House Rules Committee under a very determined, aggressive chairman of the Rules Committee. I had an amendment that I thought was well placed, well taken, pertinent. It was on agriculture. It was on something that dealt with the farm bill or agricultural program policy. But I was a Republican. I went in and I thought this amendment would be considered under parliamentary procedure whether it would be germane or not. Guess what. It was just a rehash of a partisan debate because it was not bipartisan. We had a lot of bipartisan support for it.

So my amendment was not allowed. Then I figured it out. Charlie Stenholm was from Texas—well, he still is from Texas and he is still active in the agriculture community. Very active, very respected. Charlie wanted the same amendment. So I finally figured out, let Stenholm introduce my amendment, but don't tell them it is my amendment.

So Stenholm introduced my amendment and then as soon as it was approved by the House Rules Committee, then it became the Stenholm-Roberts amendment. If it passed, obviously, it became the Roberts-Stenholm amendment in Kansas and the Stenholm-Roberts amendment in Texas, and that is how we got things done. So we had the Stenholm-Roberts for quite a few years. I never went into the Rules Committee because if I did I knew I would lose. Boy, talk about one-party rule.

We don't want to do that. Guess what. We had a revolution back in 1994. I became chairman of the Agriculture Committee. All of a sudden the Stenholm-Roberts amendment became the Roberts-Stenholm amendment, and that is how it worked in the House of Representatives.

I don't think we want to do that. It is precisely for this reason that many Members of the House choose to run for the Senate. That is why I did it. The Senate is supposed to be different. Here, if you want to be heard on a bill, it will happen. We haven't been living up to that recently, but that is how the place is supposed to work. In the Senate the Senator's right to speak is not supposed to depend on the whim of the majority. Now it is on a whim and a prayer. That is why people run for the Senate. That is what has distinguished this body from the House since we first convened in 1789.

The majority, unfortunately, wants to erase that distinction. It wants to assure that Members do not have any rights beyond those which the majority is willing to grant.

You don't have to take my word for it. The distinguished majority leader—

whom I affectionately call Smokin' Joe—himself has recognized this. As my colleague, Senator ALEXANDER, from that desk right over there, has previously noted, Senator REID addressed this topic in his book—how appropriate—"The Good Fight," from a boxer and now our majority leader. Senator REID wrote about the battle over the nuclear option in 2005. Things were a little different. This is what he wrote:

Once you opened that Pandora's box, 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. And that, simply put, would be the end of the United States Senate.

The end of the United States Senate. The distinguished majority leader said:

It is the genius of the Founders that they conceived the Senate as a solution to the small state/big state problem. And central to that solution was the protection of the rights of the minority. A filibuster is the minority's way of not allowing the majority to shut off debate, and without robust debate, the Senate is crippled.

Senator REID went on to say:

Such a move would transform the body into an institution that looked just like the House of Representatives where everything passes with a simple majority.

Senator REID also wrote:

there will come a time when we will all be gone, and the institutions that we now serve will be run by men and women not yet living, and those institutions will either function well because we've taken care of them, or they will be in disarray and someone else's problem to solve.

Boy, that is pretty heavy stuff; that is meaningful. That is something everybody here should consider.

He described the nuclear option this way at that time:

In a fit of partisan fury—

I am not quite sure we are there yet. I would say it is more of a partisan frustration.

they were trying to blow up the Senate. Senate rules can only be changed by a two-thirds vote of the Senate, or sixty-seven Senators. The Republicans were going to do it illegally with a simple majority, or fifty-one. Vice President Cheney was prepared to overrule the Senate parliamentarian. Future generations be damned.

Do you think the Senator was upset then? He was upset then a heck of a lot more than he was this morning. If only the majority leader would recall his own words.

The Vice President also recognized the damage this would do. This is what Vice President BIDEN said on the floor when he was still a Member of this body. This is important stuff. We all know JOE BIDEN. We are all a friend of JOE BIDEN. He is the Vice President of the United States. When he was a Senator he said something very important:

Put simply, the nuclear option would transform the Senate from the so-called cooling saucer our Founding Fathers talked about to cool the passions of the day to a pure majoritarian body like a Parliament.

Republicans control the Senate, and they have decided they are going to change the

rule. At its core, the filibuster is not about stopping a nominee or a bill, it is about compromise and moderation. That is why the Founders put unlimited debate in. When you have to—and I never conducted a filibuster—but if I did, the purpose would be that you have to deal with me as one Senator. It does not mean I get my way. It means you may have to compromise. You may have to see my side of the argument. That is what it is about, engendering compromise in moderation.

JOE BIDEN went on to say:

If there is one thing I have learned in my years here, once you change the rules and surrender the Senate's institutional power, you never get it back.

Folks, we are about to break the rules to change the rules.

He went on to say:

The nuclear option abandons America's sense of fair play. It is the one thing this country stands for: Not tilting the playing field on the side of those who control and own the field.

Then he said to the Republican side of the aisle, which was then in the majority:

I say to my friends on the Republican side: You may own the field right now, but you won't own it forever. I pray God when the Democrats take back control, we don't make the kind of naked power grab you are doing. But I am afraid you will teach my new colleagues the wrong lessons.

We are only in the Senate as temporary custodians of the Senate. The Senate will go on. Mark my words, history will judge this Republican majority harshly, if it makes this catastrophic move.

I hope the Vice President will listen to his own prayers. We don't need any divine intervention here, but maybe he can share his concerns with the majority leader. It could help us avert a real catastrophe.

The majority leader and the Vice President are not the only people who recognize the damage that would be done by triggering the so-called nuclear option. Our former Parliamentarian, named Bob Dove—a man whose advice I sought when I had the privilege of being the acting Presiding Officer—and Richard Arenberg, a professor and one-time aide to former majority leader George Mitchell, wrote a book on the subject, "Defending the Filibuster."

I know I am quoting a lot, but these are important issues. I hope they stick like a burr under your saddle so they make you stop and think about this. They wrote—

If a 51-vote majority is empowered to rewrite the Senate's rules, the day will come, as it did in the House of Representatives, when a majority will construct rules that give it near absolute control over amendments and debate. And there is no going back from that. No majority in the House of Representatives has or ever will voluntarily relinquish that power in order to give the minority a greater voice in crafting legislation.

Do not be fooled by those who would try to minimize the impact of what the majority is actually contemplating.

The rule changes themselves are less important than the manner in which they will be imposed. Once the major-

ity has decided it can set the rules, there is no limit to what the majority might do in the future. I hope you understand that. There are no constraints. The majority claims these changes are necessary to make the Senate function. If it decides further changes are needed, it will make them. The minority will have no voice, no say, no power, and that has never been the case in the Senate.

Tragically, what the majority contemplates is at once both calamitous and totally unnecessary. The filibuster is a product of our dysfunction, not the source.

I know many Members—and I have harped on this—do not even know what it is like to serve in a functioning Senate. They hardly know what it is like to operate under regular order where bills are referred to committee, amended, brought to the floor, debated, amended, and passed.

This matter should be before the Rules Committee. We should have a complete hearing and then bring it to the floor. We averted this at the first of this year. I know people think the filibuster is to blame for this breakdown, but they are wrong. We don't operate under regular order here because the majority leadership doesn't want to. They have an agenda. I understand that.

They have been trying to operate this place like the House of Representatives for years. They want to control debate and to control the amendments.

I know a little bit about this. When we were talking about the farm bill last year, Senator REID said: We can't do a farm bill in less than 3 weeks. I said: We will do it in 3 days. Senator STABENOW and I worked very hard to get common agreement on the farm bill, but we did it. We needed regular order. We needed to open it up. We needed to give Senators here on our side a chance to at least offer amendments, and we did it. We had 73 amendments. We did it in 2½ days. We had regular order and people said: Gee, is this what the Senate used to be all about? And that was the case. So it can work.

I know there are folks over there who think the filibuster is to blame for this breakdown, but they are wrong. Rather than give up that control, they have decided during the past 4 years—with the exception of a few bills I have just mentioned—I think they want to make it official. I think they would rather blow up the Senate rather than let it work its will.

It will be a tragedy. They think it will save the Senate, but it will destroy it. That threat of destruction may not be obvious to some today, but it is real. If the nuclear option is deployed, one day it will become clear to all. And when that day comes and people wonder: What happened to the Senate? When did it die? We will know the answer. It died the day the nuclear option was triggered. That is what nuclear devices do—they destroy. This is not just

a minor shot across the bow to be used only once. This is a mushroom cloud over the Capitol.

Again, I urge the distinguished majority leader: Don't take your nuclear gun to town.

Madam President, I ask unanimous consent to have the remarks by U.S. Senator Robert C. Byrd at the orientation of new Senators, December 3, 1996, printed in the RECORD.

I also ask unanimous consent that Senator Byrd's final speech before the Rules Committee called "The Filibuster And Its Consequences" be printed in the RECORD.

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

REMARKS BY U.S. SENATOR ROBERT C. BYRD
AT THE ORIENTATION OF NEW SENATORS, DECEMBER 3, 1996

Good afternoon and welcome to the United States Senate Chamber. You are presently occupying what I consider to be "hallowed ground." You will shortly join the ranks of a very select group of individuals who have been honored with the title of United States Senator since 1789 when the Senate first convened. The creator willing, you will be here for at least six years. Make no mistake about it, the office of United States Senator is the highest political calling in the land. The Senate can remove from office Presidents, members of the Federal judiciary, and other Federal officials but only the Senate itself can expel a Senator.

Let us listen for a moment to the words of James Madison on the role of the Senate.

"These [reasons for establishing the Senate] were first to protect the people against their rulers; secondly to protect the people against the transient impression into which they themselves might be led. [through their representatives in the lower house] A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware, that those charged with the public happiness, might betray their trust. An obvious precaution against this danger would be to divide the trust between different bodies of men, who might watch and check each other. . . . It would next occur to such a people, that they themselves were liable to temporary errors, through want of information as to their true interest, and that men chosen for a short term, [House members], . . . might err from the same cause. This reflection would naturally suggest that the Government be so constituted, as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion, would be that they themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose against impetuous councils. . . ."

Ladies and gentlemen, you are shortly to become part of that all important, "necessary fence," which is the United States Senate. Let me give you the words of Vice President Aaron Burr upon his departure from the Senate in 1805. "This house," said he, "is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption;

and if the Constitution be destined ever to perish by the sacrilegious hand of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor." Gladstone referred to the Senate as "that remarkable body—the most remarkable of all the inventions of modern politics."

This is a very large class of new Senators. There are fifteen of you. It has been sixteen years since the Senate welcomed a larger group of new members. Since 1980, the average size class of new members has been approximately ten. Your backgrounds vary. Some of you may have served in the Executive Branch. Some may have been staffers here on the Hill. Some of you have never held federal office before. Over half of you have had some service in the House of Representatives.

Let us clearly understand one thing. The Constitution's Framers never intended for the Senate to function like the House of Representatives. That fact is immediately apparent when one considers the length of a Senate term and the staggered nature of Senate terms. The Senate was intended to be a continuing body. By subjecting only one-third of the Senate's membership to reelection every two years, the Constitution's Framers ensured that two-thirds of the membership would always carry over from one Congress to the next to give the Senate an enduring stability.

The Senate and, therefore, Senators were intended to take the long view and to be able to resist, if need be, the passions of the often intemperate House. Few, if any, upper chambers in the history of the western world have possessed the Senate's absolute right to unlimited debate and to amend or block legislation passed by a lower House.

Looking back over a period of 208 years, it becomes obvious that the Senate was intended to be significantly different from the House in other ways as well. The Constitutional Framers gave the Senate the unique executive powers of providing advice and consent to presidential nominations and to treaties, and the sole power to try and to remove impeached officers of the government. In the case of treaties, the Senate, with its longer terms, and its ability to develop expertise through the device of being a continuing body, has often performed invaluable service.

I have said that as long as the Senate retains the power to amend and the power of unlimited debate, the liberties of the people will remain secure. The Senate was intended to be a forum for open and free debate and for the protection of political minorities. I have led the majority and I have led the minority, and I can tell you that there is nothing that makes one fully appreciate the Senate's special role as the protector of minority interests like being in the minority. Since the Republican Party was created in 1854, the Senate has changed hands 14 times, so each party has had the opportunity to appreciate first-hand the Senate's role as guardian of minority rights. But, almost from its earliest years the Senate has insisted upon its members' right to virtually unlimited debate.

When the Senate reluctantly adopted a cloture rule in 1917, it made the closing of debate very difficult to achieve by requiring a super majority and by permitting extended post-cloture debate. This deference to minority views sharply distinguishes the Senate from the majoritarian House of Representatives. The Framers recognized that a minority can be right and that a majority can be wrong. They recognized that the Senate should be a true deliberative body—a forum in which to slow the passions of the House, hold them up to the light, examine them,

and, thru informed debate, educate the public. The Senate is the proverbial saucer intended to cool the cup of coffee from the House. It is the one place in the whole government where the minority is guaranteed a public airing of its views. Woodrow Wilson observed that the Senate's informing function was as important as its legislating function, and now, with televised Senate debate, its informing function plays an even larger and more critical role in the life of our nation.

Many a mind has been changed by an impassioned plea from the minority side. Important flaws in otherwise good legislation have been detected by discerning minority members engaged in thorough debate, and important compromise which has worked to the great benefit of our nation has been forged by an intransigent member determined to filibuster until his views were accommodated or at least seriously considered.

The Senate is often soundly castigated for its inefficiency, but in fact, it was never intended to be efficient. Its purpose was and is to examine, consider, protect, and to be a totally independent source of wisdom and judgment on the actions of the lower house and on the executive. As such, the Senate is the central pillar of our Constitutional system. I hope that you, as new members will study the Senate in its institutional context because that is the best way to understand your personal role as a United States Senator. Your responsibilities are heavy. Understand them, live up to them, and strive to take the long view as you exercise your duties. This will not always be easy.

The pressures on you will, at times, be enormous. You will have to formulate policies, grapple with issues, serve the constituents in your state, and cope with the media. A Senator's attention today is fractured beyond belief. Committee meetings, breaking news, fundraising, all of these will demand your attention, not to mention personal and family responsibilities. But, somehow, amidst all the noise and confusion, you must find the time to reflect, to study, to read, and, especially, to understand the absolutely critically important institutional role of the Senate.

May I suggest that you start by carefully reading the Constitution and the Federalist papers. In a few weeks, you will stand on the platform behind me and take an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic; to bear true faith and allegiance to the same; and take this obligation freely, without any mental reservation or purpose of evasion; and to well and faithfully discharge the duties of the office on which you are about to enter: So help you God.

Note especially the first 22 words, "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies foreign and domestic . . ." In order to live up to that solemn oath, one must clearly understand the deliberately established inherent tensions between the 3 branches, commonly called the checks and balances, and separation of powers which the Framers so carefully crafted. I carry a copy of the Constitution in my shirt pocket. I have studied it carefully, read and reread its articles, marveled at its genius, its beauty, its symmetry, and its meticulous balance, and learned something new each time that I partook of its timeless wisdom. Nothing will help you to fully grasp the Senate's critical role in the balance of powers like a thorough reading of the Constitution and the Federalist papers.

Now I would like to turn for a moment to the human side of the Senate, the relationship among Senators, and the way that even that faced of service here is, to a degree, governed by the constitution and the Senate's

rules. The requirement for super majority votes in approving treaties, involving cloture, removing impeached federal officers, and overriding vetoes, plus the need for unanimous consent before the Senate can even proceed in many instances, makes bipartisanship and comity necessary if members wish to accomplish much of anything. Realize this. The campaign is over. You are here to be a Senator. Not much happens in this body without cooperation between the two parties.

In this now 208-year-old institution, the positions of majority and minority leaders have existed for less than 80 years. Although the positions have evolved significantly within the past half century, still, the only really substantive prerogative the leaders possess is the right of first recognition before any other member of their respective parties who might wish to speak on the Senate Floor.

Those of you who have served in the House will now have to forget about such things as the Committee of the Whole, closed rules, and germaneness, except when cloture has been invoked, and become well acquainted with the workings of unanimous consent agreements. Those of you who took the trouble to learn Deschler's Procedure will now need to set that aside and turn in earnest to Riddick's Senate Procedure.

Senators can lose the Floor for transgressing the rules. Personal attacks on other members or other blatantly injudicious comments are unacceptable in the Senate. Again to encourage a cooling of passions, and to promote a calm examination of substance, Senators address each other through the Presiding Officer and in the third person. Civility is essential here for pragmatic reasons as well as for public consumption. It is difficult to project the image of a statesman-like, intelligent, public servant, attempting to inform the public and examine issues, if one is behaving and speaking in a manner more appropriate to a pool room brawl than to United States Senate debate. You will also find that overly zealous attacks on other members or on their states are always extremely counterproductive, and that you will usually be repaid in kind.

Let us strive for dignity. When you rise to speak on this Senate Floor, you will be following in the tradition of such men as Calhoun, Clay, and Webster. You will be standing in the place of such Senators as Edmund Ross (KS) and Peter Van Winkle (WEST VIRGINIA), 1868, who voted against their party to save the institution of the presidency during the Andrew Johnson impeachment trial.

Debate on the Senate Floor demands thought, careful preparation and some familiarity with Senate Rules if we are to engage in thoughtful and informed debate. Additionally, informed debate helps the American people have a better understanding of the complicated problems which besiege them in their own lives. Simply put, the Senate cannot inform American citizens without extensive debate on those very issues.

We were not elected to raise money for our own reelections. We were not elected to see how many press releases or TV appearances we could stack up. We were not elected to set up staff empires by serving on every committee in sight. We need to concentrate, focus, debate, inform, and, I hope, engage the public, and thereby forge consensus and direction. Once we engage each other and the public intellectually, the tough choices will be easier.

I thank each of you for your time and attention and I congratulate each of you on your selection to fill a seat in this August body. Service in this body is a supreme honor. It is also a burden and a serious responsibility. Members' lives become open for

inspection and are used as examples for other citizens to emulate. A Senator must really be much more than hardworking, much more than conscientious, much more than dutiful. A Senator must reach for noble qualities—honor, total dedication, self-discipline, extreme selflessness, exemplary patriotism, sober judgment, and intellectual honesty. The Senate is more important than any one or all of us—more important than I am; more important than the majority and minority leaders; more important than all 100 of us; more important than all of the 1,843 men and women who have served in this body since 1789. Each of us has a solemn responsibility to remember that, and to remember it often.

Let me leave you with the words of the last paragraph of Volume II, of *The Senate: 1789–1989*: “Originally consisting of only twenty-two members, the Senate had grown to a membership of ninety-eight by the time I was sworn in as a new senator in January 1959. After two hundred years, it is still the anchor of the Republic, the morning and evening star in the American constitutional constellation. It has had its giants and its little men, its Websters and its Bilbos, its Calhouns and its McCarthys. It has been the stage of high drama, of comedy and of tragedy, and its players have been the great and the near-great, those who think they are great, and those who will never be great. It has weathered the storms of adversity, withstood the barbs of cynics and the attacks of critics, and provided stability and strength to the nation during periods of civil strife and uncertainty, panics and depressions. In war and in peace, it has been the sure refuge and protector of the rights of the states and of a political minority. And, today, the Senate still stands—the great forum of constitutional American liberty!”

MAY 19, 2010—RULES COMMITTEE HEARING, SENATOR BYRD'S OPENING STATEMENT, "THE FILIBUSTER AND ITS CONSEQUENCES"

On September 30, 1788, Pennsylvania became the first state to elect its United States senators, one of whom was William Maclay. In his 1789 journal Senator Maclay wrote, “I gave my opinion in plain language that the confidence of the people was departing from us, owing to our unreasonable delays. The design of the Virginians and of the South Carolina gentlemen was to talk away the time, so that we could not get the bill passed.”

Our Founding Fathers intended the Senate to be a continuing body that allows for open and unlimited debate and the protection of minority rights. Senators have understood this since the Senate first convened. In his notes of the Constitutional Convention on June 26, 1787, James Madison recorded that the ends to be served by the Senate were “first, to protect the people against their rulers, secondly, to protect the people against the transient impressions into which they themselves might be led . . . They themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose against impetuous councils.” That “fence” was the United States Senate. The right to filibuster anchors this necessary fence. But it is not a right intended to be abused.

During this 111th Congress in particular the minority has threatened to filibuster almost every matter proposed for Senate consideration. I find this tactic contrary to each Senator's duty to act in good faith. I share the profound frustration of my constituents

and colleagues as we confront this situation. The challenges before our nation are far too grave, and too numerous, for the Senate to be rendered impotent to address them, and yet be derided for inaction by those causing the delay. There are many suggestions as to what we should do. I know what we must not do. We must never, ever, tear down the only wall—the necessary fence—this nation has against the excesses of the Executive Branch and the resultant haste and tyranny of the majority. The path to solving our problem lies in our thoroughly understanding it. Does the difficulty reside in the construct of our rules or in the ease of circumventing them?

A true filibuster is a fight, not a threat or a bluff. For most of the Senate's history, Senators motivated to extend debate had to hold the floor as long as they were physically able. The Senate was either persuaded by the strength of their arguments or unconvinced by either their commitment or their stamina. True filibusters were therefore less frequent, and more commonly discouraged, due to every Senator's understanding that such undertakings required grueling personal sacrifice, exhausting preparation, and a willingness to be criticized for disrupting the nation's business.

Now, unbelievably, just the whisper of opposition brings the “world's greatest deliberative body” to a grinding halt. Why? Because this once highly respected institution has become overwhelmingly consumed by a fixation with money and media. Gone are the days when Senators Richard Russell and Lyndon Johnson, and Speaker Sam Rayburn gathered routinely for working weekends and couldn't wait to get back to their chambers on Monday morning. Now every Senator spends hours every day, throughout the year and every year, raising funds for reelection and appearing before cameras and microphones. Now the Senate often works three-day weeks, with frequent and extended recess periods, so Senators can rush home to fundraisers scheduled months in advance.

Forceful confrontation to a threat to filibuster is undoubtedly the antidote to the malady. Most recently, Senate Majority Leader Reid announced that the Senate would stay in session around-the-clock and take all procedural steps necessary to bring financial reform legislation before the Senate. As preparations were made and cots rolled out, a deal was struck within hours and the threat of filibuster was withdrawn.

I heartily commend the Majority Leader for this progress, and I strongly caution my colleagues as some propose to alter the rules to severely limit the ability of a minority to conduct a filibuster. I know what it is to be Majority Leader, and wake up on a Wednesday morning in November, and find yourself a Minority Leader.

I also know that current Senate Rules provide the means to break a filibuster. I employed them in 1977 to end the post-cloture filibuster of natural gas deregulation legislation. This was the roughest filibuster I have experienced during my fifty-plus years in the Senate, and it produced the most-bitter feelings. Yet some important new precedents were established in dealing with post-cloture obstruction. In 1987, I successfully used Rules 7 and 8 to make a non-debatable motion to proceed during the morning hour. No leader has attempted this technique since, but this procedure could be and should be used.

Over the years, I have proposed a variety of improvements to Senate Rules to achieve a more sensible balance allowing the majority to function while still protecting minority rights. For example, I have supported eliminating debate on the motion to proceed to a matter (except for changes to Senate rules), or limiting debate to a reasonable

time on such motions, with Senators retaining the right to unlimited debate on the matter once before the Senate. I have authored several other proposals in the past, and I look forward to our committee work ahead as we carefully examine other suggested changes. The Committee must, however, jealously guard against efforts to change or reinterpret the Senate rules by a simple majority, circumventing Rule XXII where a two-thirds majority is required.

As I have said before, the Senate has been the last fortress of minority rights and freedom of speech in this Republic for more than two centuries. I pray that Senators will pause and reflect before ignoring that history and tradition in favor of the political priority of the moment.

I urge all Members of this wonderful body to read what Senator Byrd said and urged and counseled and advised. I know the new Members have not had this experience.

When you first went in, you thought, my gosh, how long is this going to last? The man wrote a book about the Senate. As it turned out, we hung on every word and took his advice, and it is good advice. It is printed in the RECORD. Read it.

The PRESIDING OFFICER. Without objection, the material will be placed in the RECORD.

Mr. ROBERTS. We might have a heck of a test on it next week.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Madam President, I appreciate the comments of the Senator from Kansas. I am sure he will have to take a call from the Vice President to discuss his remarks on the floor. I appreciate the way in which he talked about all that has been said on the floor in the past by the Vice President, and President Obama, who was then a Senator, and the leaders here in the Senate. We have had lots of statements on the floor and commitments made in the past. The majority leader has committed twice on the Senate floor not to use the nuclear option, with the last time being a few months ago. These were not conditional commitments. They were not commitments with caveats. They were not commitments to not violate the rules of the Senate unless it became convenient for political purposes to violate the rules of the Senate.

As recently as January 27, 2011, the majority leader said, and I quote:

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

Earlier this year, on January 24, 2013, there was a discussion between the minority leader Senator MCCONNELL and the majority leader Senator REID. Senator MCCONNELL said:

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

He was posing a question to the majority leader.

Majority Leader REID said:

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

That was January 24, 2013.

What has happened since that point that would change the way the majority leader views this issue? Well, let's see. We confirmed the Secretary of Energy by a vote of 97-0. We confirmed the Secretary of Interior with a vote of 87-11. We confirmed the Secretary of the Treasury with a vote of 71-26. We confirmed the Secretary of State 94-3. I might add in that case, that vote happened just 7 days after the Senate got his nomination. We confirmed the Secretary of Commerce 97-1. We confirmed the Secretary of Transportation 100-0. We confirmed the Director of the Office of Management and Budget 96-0. We confirmed the Administrator of the Center for Medicare and Medicaid Services 91-7. We confirmed the Chair of the Security and Exchange Commission by voice vote. In other words, he was confirmed unanimously. Not to mention the fact we have passed major legislation out of the Senate. We just completed a 3-week debate on a major immigration overhaul, and it passed with a bipartisan vote. We had a major debate on a farm bill, which passed with a bipartisan vote. Other legislation has moved through the Senate in the last few months.

So it begs the question: Why are we now having this discussion? The majority leader said back in January he wasn't going to change the rules, and to change the rules, you have to break the rules. Let's make that very clear. It takes 67 votes to change the rules of the Senate. What is being talked about here is basically using a procedural device—a gimmick, if you will—to be able to change the rules to 51 votes. In other words, breaking the rules to change the rules.

There is absolutely no basis and no foundation based on the numbers and the facts I just quoted for the majority to be making the argument that they are here today.

If you go back and look at the statements that have been made by others in the past—and I remember coming here in 2005 as a new Member of the Senate from the House of Representatives. At that point we were debating judicial nominations. The Democrats were holding up several of President Bush's judicial nominations. There was a big debate about whether to exercise the nuclear option; in other words, to confirm some of those with 51 votes.

I remember at the time being sympathetic to that. I came from the House of Representatives. In the House of Representatives we moved things in an orderly fashion. The Rules Committee decided what legislation came to the floor, what amendments were made in order, and how much time was allowed for debate on each amendment. It was a very structured and orderly process. Those of us who got here to the Senate

were frustrated at times with the slow pace in the Senate. On some levels it made sense to think: Gee, wouldn't it be great if we could make the Senate function more like the House.

Fortunately, cooler heads prevailed because the Senate is not designed to function like the House. It was created for a very different purpose and a very different design. What we are talking about here would completely undermine that purpose and that design for this institution. We have observed traditions, rules, in the Senate for decades. What we are talking about, if the majority has its way, is doing something that would break the rules to change the rules and forever change the Senate in a way the majority leader Senator REID mentioned back in 2009; that doing that would "ruin" the country and the Senate would be "destroyed" if we went about a rules change along the lines of what is being talked about today. So I hope cooler heads will prevail again. I certainly understand now, as I look back on what happened in 2005, the wisdom of those who had been here a little bit longer and understood a little bit more about the way this institution operates: the importance of having a Senate where you have open debate, where you have the opportunity for amendments—something that in the House oftentimes you do not have the opportunity to do.

It is important, in my view, that Republicans and Democrats come together and recognize if we go back on the traditions, the rules, the precedents in the Senate, we will be forever changing not just the rules, but we will be changing the Senate, and that is certainly not what our Founders had in mind, nor do I think that is what our colleagues on the other side have in mind. They may be well-intentioned, but what they are talking about doing is going to change forever the Senate in a way that would be very perilous to this institution and, more importantly, jeopardize the rights of the American people to have their voice heard in the Senate.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I have the greatest respect for my friend from South Dakota. But, obviously, he missed the speeches this morning. We went through all this. I am not going to repeat what has gone on since the broken promise earlier this year.

EXECUTIVE SESSION

NOMINATION OF RICHARD CORDRAY TO BE DIRECTOR, BUREAU OF CONSUMER FINANCIAL PROTECTION

Mr. REID. Madam president, I move to proceed to executive session to consider Calendar No. 51.