under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Fred P. Hochberg, of New York, to be President of the Export-Import Bank of the United States.

Harry Reid, Tim Johnson of South Dakota, Benjamin L. Cardin, Christopher A. Coons, Patrick J. Leahy, Charles E. Schumer, Ron Wyden, Patty Murray, Heidi Heitkamp, Tom Udall of New Mexico, Martin Heinrich, Jack Reed, Sheldon Whitehouse, Elizabeth Warren, Richard J. Durbin, Kirsten E. Gillibrand, Robert Menendez.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. REID. Madam President, I now move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

EXECUTIVE SESSION

NOMINATION OF THOMAS EDWARD PEREZ TO BE SECRETARY OF LABOR

Mr. REID. Madam President, I move to proceed to executive session to consider Calendar No. 99.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Thomas Edward Perez, of Maryland, to be Secretary of Labor.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Thomas Edward Perez, of Maryland, to be Secretary of Labor.

Harry Reid, Tom Harkin, Patrick J. Leahy, Bill Nelson, Christopher A. Coons, Amy Klobuchar, Tim Kaine, Jack Reed, Barbara A. Mikulski, Sheldon Whitehouse, Sherrod Brown, Benjamin L. Cardin, Robert P. Casey Jr., Bernard Sanders, Al Franken, Robert Menendez, Barbara Boxer.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. REID. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

EXECUTIVE SESSION

NOMINATION OF REGINA McCARTHY TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

Mr. REID. Madam President, I move to proceed to executive session to consider Calendar No. 98.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Regina McCarthy, of Massachusetts, to be Administrator of the Environmental Protection Agency.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Regina McCarthy, of Massachusetts, to be Administrator of the Environmental Protection Agency.

Harry Reid, Barbara Boxer, Benjamin L. Cardin, Christopher A. Coons, Patrick J. Leahy, Tom Carper, Ron Wyden, Patty Murray, Tom Udall, Martin Heinrich, Bernard Sanders, Sheldon Whitehouse, Max Baucus, Richard J. Durbin, Kirsten E. Gillibrand, Jeff Merkley, Brian Schatz.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. REID. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The Republican leader.

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. McCONNELL. Madam President, I have a consent that I think would set up these votes in a much more expeditious way than the way the majority leader is proceeding. But first let me just say, these are dark days in the history of the Senate. I hate that we have come to this point. We have witnessed the majority leader break his word to the Senate.

Now our request for a joint meeting of all the Senators has been set for Monday night—a time when attendance around here is frequently quite spotty—in an obvious effort to keep as many of his Members from hearing the concerns and arguments of the other side as possible. It remains our view that for this to be the kind of joint session of the Senate that it ought to be, given the tendency of the Senate to have sparse attendance on a Monday night, to have this meeting on Tuesday before it is too late.

Having said that, a more expeditious way to accomplish most of what the majority leader is trying to accomplish would be achieved by the following consent: I ask unanimous consent that on Tuesday at 2:15, the Senate proceed to consecutive votes on the confirmation of the following nominations: No. 104, that is Pearce to be a member of the NLRB; No. 102, Johnson, to be a member of the NLRB, and No. 103, Miscimarra, to be a member of the NLRB.

I might just say, parenthetically, if those nominees were confirmed, coupled with the two nominees illegally appointed, whose illegal appointments' term continue until the end of the year, the NLRB would have a full complement of five members and able to conduct its business.

I further ask consent that following those votes, the Senate proceed to the cloture motion filed on Calendar No. 99; that is, Perez, to be Secretary of Labor; and, further, if cloture is invoked, the Senate immediately proceed to a vote on the confirmation of the nomination—I would add, parenthetically, that would eliminate the post 30 hours, assuming cloture were invoked on the very controversial nominee, Perez, to be Secretary of Labor—further, the Senate then vote on the cloture motion filed on Calendar No. 98, McCarthy, to be EPA Director; and if cloture is invoked, the Senate proceed to a vote on the confirmation of the nomination—also eliminating the 30 hours postcloture if cloture is invoked on McCarthy; and I might add that the ranking member of the environment committee supports cloture on the McCarthy nomination. Thereby, it is reasonable to assume that cloture would be invoked on what is for a lot of our Members, including myself, a very controversial nomination. I further ask consent that the Senate then vote on the cloture motion that was filed on Calendar No. 178—this is someone named Hochberg, to be president of the

Export-Import Bank—again, if cloture is invoked, the Senate proceed to an immediate vote on the confirmation of that nomination—again, eliminating the 30 hours postcloture, assuming cloture is invoked; and I assume that it will be—finally, I ask consent that following the votes listed above the Senate proceed to the cloture votes on the remaining three filed cloture motions.

Now, before the Chair rules, what this allows, as I indicated, is for the Senate to work efficiently through a series of nominations in a quicker fashion than the majority leader has proposed.

They would get their votes and there would not be a delay. This would only leave discussion and votes on the three remaining illegally—according to the Federal court—the three remaining illegally appointed nominations. That is my unanimous consent.

The PRESIDING OFFICER (Mr. COONS). Is there objection?

Mr. REID. Mr. President, reserving the right to object, no matter how often my friend rudely talks about me not breaking my word, I am not going to respond talking about how many times he has broken his word. That does not add anything to this debate we are having. So he can keep saying that as much as he wants. All we have to do is look back at the record today.

As to the caucus Monday night, my Members will be here. I do not understand—unless this is part of the overall pattern we have come to expect around here, to not do anything today you can do tomorrow. We are going to have a vote at 5:30. Members are usually pretty good at getting here for votes at 5:30.

I also am stunned by boasting about the ranking member on the EPW Committee suddenly seeing the light and he is going to allow Gina McCarthy to get a vote. Now, is that not wonderful? Is that not something to cheer about? He has held up this woman. He is the one who is responsible for 1,100 questions to her. That is what is wrong here. This is so transparent what my friend has asked. He has said he wants to approve two Republican members to the NLRB. Let's have those votes first—only one Democratic nominee. What does this mean? It means within a couple of months Republicans have a majority of the NLRB. I do not blame him for wanting that.

They do not like the organization anyway, just like they do not like Cordray's organization. So I can understand that the Republican leader would like to get consent to create a Republican majority on the NLRB. But it is so obvious. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. We are going to have a caucus Monday at 6 o'clock in the Old Senate Chamber. We are going to vote at 5:30. I would hope with something this important we will have attendance. I know my caucus will be there. If nothing is resolved there, which is the way things have been going today, likely it will not be, so we will have a vote sometime early Tuesday morning on these nominations.

Mr. MCCONNELL. Mr. President, the majority leader always reminds me he can have the last word. I am sure he can have the last word again. Speaking for Senator VITTER, he did ask for a lot of information from the new prospective Administrator of the EPA—so did Senator BOXER. She asked for 70,000 pages herself. But he was satisfied with the responses he got. This is how the process ought to work. This is how it has worked for decades. You are trying to get answer to questions. You are trying to engage in some kind of prediction as to how somebody might operate in the future.

What the majority leader has been saying all along is he wants the confirmation process to be speedy and for the minority to sit down and shut up. He believes that advise and consent means sit down and shut up; confirm these nominees when I tell you to.

The reason he is having to take a lot of heat over this is because he has broken his word to the Senate, given last January, that we had resolved the rules issue for this Congress. I know for a fact, even though he may get his 51 votes, there are a lot of Democrats who are not happy with where the leader is.

When they tell me that—the Republican I expect they would be least likely to want to tell that to—I know what is going on here. They have been hammered into line. This has been personalized by the majority leader: You have to do this for me. What is astonishing is he is saying, you have to do this for me because you have to help me break my word and go back on everything I said in my own biography just a few years ago. You have to help me look bad. You have to help me break my word, violate what I said in my own biography, create unnecessary controversy in the Senate, which has done major bills on a bipartisan basis all year long and had begun to get back to normal.

This is very hard to understand. This is why my Members are astonished at where we are. They are scratching their heads, saying: Who manufactured this crisis? We know who manufactured it, the guy right over here to my left. So this is a very sad day for the Senate. If we do not pull back from the brink, my friend the majority leader is going to be remembered as the worst leader of the Senate ever, the leader of the Senate who fundamentally changed the body.

It makes me sad. Some of my Members are more angry. I am more sad about it. But it is a shame we have come to this. I sure hope all the Democratic Senators are there Monday night. I am certainly going to encourage my Members to be there. It is high time we sat down and tried to understand each other, because many Members on the other side are hearing a different version of the facts that are largely unrelated to reality.

I know my friend the majority leader will have the last word. He reminds me of that frequently, on a daily basis, that the difference between being the majority leader and the minority leader is he gets the last word. So I will yield the floor and listen to the last word.

Mr. REID. Mr. President, no matter how many times he says it, he tends to not focus on what he has done to the Senate. As I indicated earlier, there is lots of time for name-calling. But we know it is replete in the RECORD, as delivered this morning, how he said there would be no filibusters, we would follow the norms of the Senate, only extraordinary circumstances.

The extraordinary circumstances have come because we are in session, I guess. The only person I know who thinks things are going just fine is my friend. The American people know this institution is being hammered hard. He does not have to worry about me for the heat I have taken. I have not taken any heat. I had a very nice caucus today. My caucus was thoughtful. We heard from—out of my 54 Senators, we probably heard from 25 or 26 of them. Attendance was nearly perfect. So I do not want him to feel sorry for the Senate, certainly not for me.

I am going to continue to try to speak in a tone that is appropriate. His name-calling—I guess he follows, and I hope not, the demagogic theory that the more you say something, even if it is false, people start believing it.

It is quite interesting that Richard Cordray, who no one—no one—says there is a thing wrong with this man, former attorney general of the heavily populated State of Ohio—Democrats and Republicans have said he is a good guy—this man has been waiting 724 days; Assistant Secretary for Defense, 292 days; Monetary Fund Governor, 169 days; EPA, 128 days; NLRB, two of them, 573 days. We have 15 of them. Average time waiting is 9 months.

Reshuffling the votes as he wants them, that is a laugher. He wants to have a majority of the NLRB be Republicans. I do not think that is a good idea. We are going to have our caucus Monday. I think it was a good idea. I have tried to have them before. My friend has objected to them. That is replete in the press. But we are going to have this one. I am happy to do that.

My friend said the process works. The process works? The status quo is good. I do not think so.

Mr. MCCONNELL. Of course, the majority of the NLRB would not be Republicans. I have mentioned to the administration on several occasions: Send us up two nominees who are not illegally appointed. But we cannot seem to get that done. I mean, the taint attached to the two NLRB nominees and to Mr. Cordray, who I agree is a good man and many of my Members support, is that they were illegally appointed.

But, of course, the agencies have not been at a disadvantage. They are there

waiting. He may have been waiting to be confirmed, but he is not waiting to do the job. He is in office. The two NLRB members are in office. The question is, do we respect the law? A Federal court has said the two NLRB members were illegally appointed.

Mr. Cordray, unfortunately, was appointed on exactly the same day in exactly the same way. Is the Senate completely lawless? Do we not care what the Federal courts say? I am stunned at where we are. It is pretty clear to me that all the other nominees are highly likely to be confirmed.

What it comes down to is that the majority leader is going to break the rules of the Senate to change the rules of the Senate in order to confirm, with 51 votes, three illegally appointed positions that the Federal courts have told us are unconstitutionally appointed. That is the rationale for the nuclear option?

That is why I say it is a sad day for the Senate, a sad day for America.

Mr. REID. Mr. President, illegally appointed? Why did President Obama recess appoint Cordray and the two NLRB members? Because the Republicans had blocked them, blocked them, blocked them, blocked them. We count Cordray as only 571 days. That went on long before he got there. ELIZABETH WARREN is the one who set up this program. They said: No chance. Do not even think of bringing her here. That is when he came with Cordray. ELIZABETH WARREN found him as attorney general of Ohio. So these big crocodile tears—you have recess appointments because the President had no choice if he wanted his team to work.

He said: Oh, we would be happy to process them quickly, just like Richard Perez has been processed quickly? Just like all of these people have been processed quickly? Sorry. So there is not a chance that we are going to let the NLRB be dominated by Republicans. That one organization, above all, looks out for working men and women in this country, should not be dominated by Republicans. It is not going to be.

So I repeat, this issue can be resolved very quickly. I had somebody out here at my stakeout say: What happens if you get cloture on everybody?

I said: There is no problem. They can all vote against these people. They can vote against them, every one of them. But they, on a procedural basis, they are holding up votes on people who are well qualified and would be approved by the Senate if they got a vote. So this is a little strange deal. Talk about marshaling your troops to do something that is absolutely wrong. It is that. If they are so worried about the rules changes around here, it would seem to me they should approve three qualified people whom no one—no one—suggests there is anything wrong with any of them.

Why were they recess appointed? Because the Republicans forced President Obama to do that. There will be no further votes this week. The next vote will be Monday at 5:30.

The PRESIDING OFFICER (Mr. MERKLEY). The Republican leader.

Mr. MCCONNELL. Mr. President, on the issue of delay, I am trying to avoid bursting out in laughter. The two NLRB nominees were sent up to the Senate December 15, 2011—December 15, 2011. Before their paperwork got here, 2 weeks later the President recess appointed them. Delay? Their paperwork had not even arrived. The committee could not do anything with them. A couple of weeks later they were recess appointed.

That is not my definition of a delay, by any objective standard.

The core issue here, no matter how much the majority leader tries to obfuscate and discuss other matters, is that he is prepared to break the rules of the Senate to change the rules of the Senate for three nominees who were unconstitutionally appointed, according to the Federal Circuit Court in Washington, DC. For that, the majority leader proposes to use the nuclear option? It is a sad, sad commentary on today's Senate.

The PRESIDING OFFICER. The majority leader.

Mr. REID. A sad day in the Senate created by the Republicans. This rules change—he keeps talking about the rules change. The Presiding Officer knows the Constitution is very clear. It is clear that there is one paragraph that says treaties take a two-thirds vote. In that same paragraph, how many votes does it take to confirm a nomination? A simple majority. That is in our Constitution. Since 1977 rules have been changed in this body 17 times—not by fancy things done by the Rules Committee but right here in the Senate.

We have three people who are qualified, and if Republicans want to avoid a problem—obviously they don't. What they want to do is continue.

Can you imagine—the American people are looking at this and saying: The Republican leader thinks the Senate is going just fine, the status quo is good? Look at any poll. The Gallup Poll did one. Eighty-six percent of the American people—why do they think things are bad? Because of gridlock, not doing important things. Sure we were able to get a few things done, but I have been here a while, and we have done some good things this year, but we should be doing lots of good things, not focused on immigration and a farm bill that has been passed twice, on a postal bill that we passed once and we haven't passed again. We talk a lot about WRDA. I am glad we got that done, WRDA, and I am not going to denigrate my friend, the chairman of that committee, but that bill is a mere shadow of its former self because of what the Republicans have done to make a mockery of what goes on here.

All we want is for the President of the United States, whoever that might be, Democrat or Republican, to be able to have the team he wants as contemplated in that document called the Constitution of the United States. That is not asking too much.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MERKLEY. Are there any rules currently on how long one may speak?

The PRESIDING OFFICER. Senators may speak for up to 10 minutes each.

Mr. MERKLEY. I have been listening carefully to the debate that has been taking place here on the floor, and the esteemed minority leader had a couple of phrases that he used any number of times.

One of those was that this debate is about whether to break the rules in order to change the rules, and the second phrase, also involving the word ''break,'' was to repeatedly say to the majority leader: You have broken your word. Those are very powerful words. My mother always told me that when people start saying things like that, it is because they are at a loss for a real argument, but I found them disturbing. I found both of those phrases disturbing. I found them disturbing because they are so at odds with what this conversation is really about.

We are here in the midst of a constitutional crisis. Our Constitution was set up with a balance of powers between three coequal branches, with checks and balances. Never in their wildest dreams did the crafters of our Constitution envision that a minority of the Senate, a minority of one Chamber, would undermine the functioning of the other two branches. In fact, they were very deliberate—very, very deliberate—in their determination that there not be such a possibility. They laid out with clarity that advise and consent on treaties took a supermajority, but when it came to the other branches, the judicial branch and executive branch have a de facto simple majority standard in the Constitution. They are in exactly the same paragraph, so you can compare them, one to the other.

Our Founders talked about this, and they talked about it because they had the experience with the Continental Congress in which a supermajority had caused all sorts of difficulties. So I thought I would remind us a little bit about the framework they laid out in the Constitution.

Alexander Hamilton said on a supermajority it would lead to ''tedious delays; continual negotiation and intrigue; contemptible compromises of the public good.'' Alexander Hamilton felt so strongly that there should be a simple majority standard. He wasn't alone. We have Madison, who wrote that ''the fundamental principle of free government would be reversed'' if a

supermajority was the functioning principle.

So we have this system of coequal branches with simple majority votes on nominations as a check against extraordinarily ill-advised nominations by the executive branch. Indeed, that has been the tradition throughout our Nation's history—simple majority votes on a timely basis on nominations, interspersed by very, very occasional blockades put up by exercising the will to filibuster but very rare use of that until the last few years. Indeed, it was just a few years ago that our Republican colleagues were in charge, and they were upset by a small number of filibusters by the Democrats on judicial nominees, and they came to this floor and they said that is not acceptable. They reminded us of this constitutional history, of this constitutional framework, and they asked for a deal. The deal they asked for was they wouldn't change the rules if Democrats wouldn't filibuster the nominations, and that deal was struck.

But now the tide has turned. The parties are reversed, and suddenly that deal is not holding because we see filibuster after filibuster after filibuster obstructing the ability of the executive branch—with a President reelected by the citizens of the United States—and with vacancies in the judicial branch, with judicial emergencies from hither to yon, with the largest number of judicial vacancies and the largest number of executive branch appointments piled up. Yet my colleagues on the other side are saying: The Senate is functioning just fine. Only about 8 percent of the American people think the Senate is functioning fine, and those 8 percent one would have to recognize are just not paying attention.

This is not the Senate I knew as a young man, coming here as an intern and sitting up in the staff gallery for Senator Hatfield. I would come down to the floor to brief him on the amendments and the debate before each vote. At that time, we had simple up-or-down votes on nominations, with rare exception. Even if we turn the clock back to the time of Lyndon B. Johnson, in the 6 years when Lyndon B. Johnson was majority leader in this Chamber, only once in his 6 years did he need to file a motion in order to close debate, and that wasn't just on executive nominations but a combination of executive nominations, judicial nominations and legislation—just once in 6 years.

Senator REID, in his first 6 years as majority leader, had to file 391 motions. This cloture process is designed to take a long period of time, often up to 1 week, because it was envisioned it would be used rarely.

So here we are with the minority in the Senate doing deep damage to the executive branch, deep damage to the judiciary by the abuse of the filibuster, creating an imbalance or creating unequal branches of government that is completely out of sync with the constitutional vision. Are we, as Members of this body—having taken a pledge to uphold the Constitution and having that responsibility—going to allow this deep abuse of the constitutional vision of equal branches? I don't think anyone who takes their pledge seriously can come to this floor and argue that a small group of the Senate should be able to do deep damage to the other branches.

The Republican leader said the strategy is to break the rules in order to change the rules. I thought I would just remind him that—and I believe he came here in 1985—since the time he first arrived, there have been many times the Senate changed the precedent on the application of rules. Using a simple majority, the Senate changed the application of a rule. It was done once in December 1985, once in September of 1986, then twice in 1987, once in 1995, twice in 1996, once in 1999, and once in the year 2000 and in the year 2011. That is 10 times during the time the Republican leader has been a Member of this Senate.

The minority leader described this as a nuclear option. So using his reasoning, there have been 10 nuclear option bombs exploded in this Chamber during the time he has served here. Yet I didn't hear that mentioned in the presentation he put forward. It might interest the Republican leader to recall that of these instances, where under the standard of a simple majority the application of a rule was changed during the time he has served here, that seven of those times were under Republican leadership. It has occurred three times under Democratic leadership. So seven times under Republican leadership the type of action we are discussing—of reorienting the application of a rule in order to make the Senate work better—and three times under Democratic leadership. All of these instances occurred during the time he has served in this Chamber.

So to come to the floor and talk about breaking the rules in order to change the rules, the Republican leader would have to go back and talk about those 10 times and explain how 7 of them happened under Republican leadership, but somehow that doesn't qualify as being the same standard. I think it is important to get away from the overinflation of the rhetoric that has been put forward.

The second piece that bothered me in this debate was saying the majority leader broke his word. I think everyone who is party to a deal understands there are two parties to a deal and those two parties need to uphold their half. So I would remind folks about what the Republican leader's half of that deal was. I put on this chart, ''The January Pledge.'' This is the pledge made by the Republican leader on the floor of this Chamber. He said: ''Senate Republicans will continue to work with the majority to process nominations, consistent with the norms and traditions of the Senate.''

What are those norms and traditions? Those norms and traditions are that nominations are able to be voted on in a modest period of time with up-or-down votes. If we should have any doubt about what the minority leader meant about norms and traditions, we can go to the Republican policy document from 2005. Here we have the last major debate over the abuse of the filibuster—Democrats in the minority, Republicans in the majority—and this is what the Republican policy argument said:

> This breakdown in Senate norms is profound. There is now a risk that the Senate is creating a new 60-vote confirmation standard. The Constitution plainly requires no more than a majority vote to confirm any executive nomination, but some Senators have shown that they are determined to override this constitutional standard.

I will stop quoting there for a minute and just note this was a very clear delineation of the constitutional standard during the time the Republican leader was in this Chamber, in 2005—not so many years ago. The document goes on to say:

> Thus, if the Senate does not act . . . to restore the Constitution's simple majority standard, it could be plausibly argued that a precedent has been set by the Senate's acquiescence in a 60-vote threshold for nominations.

The document goes on to talk about the role of the Constitution in advise and consent:

> One way that Senators can restore the Senate's traditional understanding of its advice and consent responsibility is to employ the ''constitutional option''—an exercise of a Senate majority's power under the Constitution to define Senate practices and procedures. . . . Exercising the constitutional option in response to judicial nomination filibusters would restore the Senate to its longstanding norms and practices.

So if we want to know what norms and traditions meant in this pledge made in January, it is all laid out in extensive detail in the Republican policy document, and it is laid out in the history of the United States. It means a modest amount of time to have a vote after a nomination comes out of committee, with a simple up-or-down vote, with rare exception.

But that is not what we have had. So I would ask the Republican leader to engage in a discussion about our constitutional role, much like the debate the Republicans led in 2005. Because otherwise we are just casting aspersions, and the citizens looking in wonder at what happened to that great deliberative institution—the Senate.

This standard of processing nominations according to the norms and traditions of the Senate did not materialize after January. Within days, there was the first ever—first ever in U.S. history—filibuster of a nominee for Defense Secretary. Ironically, that nominee was former Republican Senator Chuck Hagel.

Within a short period of time after that, we had a letter from 44 Senators saying they would not allow a vote on

any nominee for the Consumer Financial Protection Bureau. Any nominee? That is the advice and consent role embodied in the Constitution that calls for a simple up-or-down vote? They are going to use the filibuster to oppose any nominee, regardless of the person's qualifications?

That is actually using the filibuster in a whole new way to basically say we don't have the votes to undo the Consumer Financial Protection Bureau—which, by the way, is charged with stopping predatory practices that undermine the success of families—so instead of trying to get rid of this institution that protects families—and I am not sure where family values fits in there—we are, instead, going to prevent anyone from exercising leadership authority and sitting in the Director's chair at the CFPB.

I see my colleague is here and waiting to speak, so I will conclude with this. Let's recognize that the deal laid out in January just didn't work. It didn't work. It doesn't make sense to keep saying who didn't make it work. Certainly, from my perspective on this side of the aisle, this issue of continuing to work to process nominations consistent with norms and traditions didn't work. My colleagues across the aisle have a different concept of why it didn't work. But at the heart of it, as they argued in 2005, there is a constitutional vision for the use of advice and consent, and that constitutional vision is in deep trouble. It is not permission for one coequal branch to undermine the other two branches.

That is why the Members of this body need to have this debate. It is why I am on the floor now, and it is why we need to wrestle with restoring the role of this Senate, the proper role in the nomination process.

I yield the floor.

The PRESIDING OFFICER (Mr. COONS). The Senator from Alabama.

Mr. SESSIONS. Mr. President, we are in an unpleasant time, indeed, in the Senate. I hate to see it happen. This is a robust body. We are at each other. We defend the interests of our constituents and try to advocate for the values we share, and it is a contentious place at times, but we usually work our way through that. I would just say there is no reason we should be at this point today.

I do believe the majority leader has been abusing the powers of his office. I remain dreadfully concerned and firmly believe this consistent practice of using the tactics of refusing to consider certain bills and filling the tree to keep Members of the Senate from having a vote is an abuse maybe even larger than the issue we are dealing with today. In fact, it is larger.

For example, we have been debating the question of interest rates going up on student loans and how to fix that. There are two different bills, two different ideas. One of those bills the majority leader supports. He has brought it up and he wants to vote on it, but he doesn't want to vote on anything else. But there are a number of Senators on this side, along with Democratic Senators who agree with them in a bipartisan way, who have come up with a better bill—I think it is better—and we want to vote on it. But, the majority leader refused to allow us to vote on that alternative. Time and time again, he prevents us from voting on legislation and from engaging in a full and open amendment process.

So in the Senate, on an important issue, on an extremely well-thought-out alternative plan that would fix the student loan interest rate issue, the majority leader basically says: No, you don't get a vote.

This is a change in the history of the Senate, and it goes on every day. Senators have to plead with the majority leader to get a vote on an amendment. This is not the way the Senate should be. It is a very big deal, it goes on every day, and it is time to stop it.

So now we have this idea that nominations have to be moved through at the pace the majority leader would like them to be. Many of these are, frankly, very controversial for very significant reasons. In my opinion, the President's nominations in his second term have been less capable than those from his first. Many of them have serious weaknesses that need to be examined, and many of them should never be approved. Let me talk about one now that is about to come to the floor. We ought to debate that one. The Constitution provides the Senate should advise and consent on nominations.

We have to consent to a nomination. That is the question we are dealing with in many ways here.

We come down to the big issue, though. In essence, it takes two-thirds—67 votes—to change the rules of the Senate. Because of a fight over three nominations that were illegally appointed, as determined by the Court of Appeals for the District of Columbia, and the President wants to continue to have them serve—which Senator MCCONNELL and many on this side oppose and don't think they should be confirmed—what the majority leader is proposing to do is to say, in essence, you can't block a vote on those nominations and require 60 votes; there only has to be 51.

He will propose that, and what will happen? The Parliamentarian of the Senate will rule that Senator MCCONNELL is correct, that the nomination is not prepared to be voted on because 60 votes weren't obtained, and the majority leader loses.

Then what does he intend to do? He intends to look to the Chair and say, I appeal the ruling of the Chair, and expects all his Members to presumably line up behind him and vote to overrule the rules of the Senate, overrule the independent Parliamentarian of the Senate. That is what he is talking about doing.

So when Senator MCCONNELL says he wants to break the rules to change the rules, that is exactly what he means. That is exactly what we are talking about.

Stability in the Senate requires us not to change the rules willy-nilly when we have a tempest in a teapot, as these nominations are. There will no doubt be times when things get so intense over big issues that actions get taken, and history will record whether they are wise. But we don't need to be changing the rules of the Senate every time it becomes inconvenient for the majority leader. He has already done this once.

He changed the rules of the Senate when Senator DeMint was making a motion to get a vote, after he was denied the right to have a vote. The majority leader filled the tree, wouldn't allow votes, and he used the postcloture technique to force at least a vote relevant to that issue. The majority leader got tired of it, appealed it; the Chair ruled for Senator DeMint, and so he asked his colleagues to join him in overruling the Chair and changing the rules of the Senate. They backed him on that and that was done.

This gets to be a habit around here, and our side is not happy with the power grab from the top, from the majority leader, and how it is impacting everyday life in the Senate, and we are not going to go quietly on this one. It is a big deal and the Senate should avoid it.

I am pleased that at least we will have a conference Monday in which we can talk about the issue openly amongst ourselves and see if we can avoid what could be a serious constitutional crisis. I believe we need to cool our heads down a bit and understand that the nature of the Senate is the majority does not get everything it wants.

I was here, and I remember how the judges' situation developed. Judges have traditionally not been filibustered. There have been a few efforts at delaying votes and people were held up, but systematic filibusters were not at all part of the tradition of the Senate.

After President Bush was elected in 2000, the Democrats went to conference at a retreat somewhere. They had Marcia Greenberger, Laurence Tribe, and Cass Sunstein, three well-known liberal lawyers and professors. They came out, and then announced, We are changing the ground rules of confirmation.

The vast majority of President Bush's early nominees to the Court of Appeals were blocked. Highly qualified nominees, with great skill and ability, there was no basis to oppose them on merit. It went on for over 2 years, and others were being blocked.

As a result, then-Leader Frist threatened this kind of event. At the end, cooler heads prevailed, a compromise was reached, and the agreement was that we would not filibuster Federal judges unless extraordinary circumstances existed. Normally, we

would give an up-or-down vote to Federal judges. That is the way that was settled.

I would say with regard to the nominations we are looking at now, these three illegally appointed nominees present a pretty extraordinary circumstance.

We shouldn't sit here and go quietly when the President of the United States—without any legal basis, in my opinion—makes a recess appointment to avoid the confirmation process, and now we object to these people being confirmed after they were in office. After they were in office, after the court ruled they were illegally appointed, they continued to sit and continued to vote on issues important to Americans. They should not have done that. They should have followed the court's order, even if they previously thought they were legally appointed—which they weren't, pretty clearly, from the beginning—it was never close to being a legitimate recess appointment. I am worried about this. Hopefully cool heads will come together and work this out.

With regard to the traditional norms of the Senate that Senator MCCONNELL talked about, I have been in the Senate long before holds have been put on nominations. You don't move the nominations until you get questions answered relative to their appointment. Nominations don't just go smoothly and get voted the next week. There are a lot of reasons for that process.

This was raised at the beginning of the year. These issues were discussed and an agreement was reached. As part of the agreement, Senator REID said he wouldn't use the nuclear option if the Republicans agreed to certain things, and an agreement was reached. Senators LAMAR ALEXANDER and JOHN MCCAIN and others were in on the agreement and an agreement was reached.

Senator MERKLEY openly says now, Well, the agreement didn't work. Well, there is an agreement out there, it was agreed to, and Senator REID is now changing that agreement—changing the commitment he made in exchange for getting concessions from this side.

This isn't the breaking of a word like, You elect me majority leader and everything is going to be sweet and nice. This was a negotiated agreement of great intensity.

Senator MERKLEY and several other Senators were involved in the discussions, and an agreement was reached. The essence of it was concessions were made by the Republican side, and the Democratic leader accepted those concessions and promised he wouldn't use the nuclear option. Now he is threatening to use the nuclear option.

The nomination of Mr. Jones, to be Director of the Alcohol, Tobacco, and Firearms, a highly important agency is supposed to happen today. Maybe in committee they determined to move it through. I was a U.S. attorney for 12 years. The closest agency you deal with is the FBI, and you have to deal with them on a regular basis. They know how well you do your job, they know whether you are functioning well, and there is normally a good relationship and you try not to be critical of one another. This is what Mr. Oswald, former Special Agent in Charge of the FBI, wrote about Mr. Jones:

> As a retired FBI senior executive, I am one of the few voices able to publicly express our complete discontent with Mr. Jones' ineffective leadership and poor service provided to federal law enforcement community without fear of retaliation or retribution from him.

Because he is no longer in office, he doesn't have any fear. He is telling the truth. He says he felt ''morally compelled to make [the] committee aware of Mr. JONES' atrocious professional reputation within the federal law enforcement community in Minnesota's Twin Cities area.''

This is the guy they want to promote to the head of the Alcohol, Tobacco, and Firearms.

The letter describes the frustration with Mr. JONES' ''ineffective leadership and his lack of concern about matters and issues brought to his attention by each of us.''

Each of us, being the other Federal agencies, like the Drug Enforcement Administration, the Secret Service, or the IRS.

> Our common dissatisfaction with Jones' poor leadership, pathetic interaction, and insufficient prosecution support was the theme of many discussion during my tenure. . . . He consistently reacted defensively and often spoke to us disrespectfully, and occasionally with disdain.

Then he went on to note that after he became the U.S. Attorney in Minnesota, they prosecuted significantly less cases of every type. Forty percent fewer defendants were charged in 2012, when Mr. Jones was the U.S. attorney, than the previous year because he wouldn't prosecute the cases, and the Federal investigative agencies were up in arms about it.

This retired SAC tells the truth. I think he should be listened to. But President Obama is determined to make him the head of the ATF, involving leadership of gun enforcement, firearms, and weapons charges all over America.

We have already had the Fast and Furious scandal. So shouldn't the Senate ask questions about this? Should we rubberstamp this? They are rushing it through committee, trying to do it right now: Move him on. Get him confirmed. And anybody who stands in the way? Tough luck.

The majority leader is going to drive it through. He gets to decide who gets confirmed around here. He gets to decide what the rules are in the Senate. They are forgetting the effort they led in the last part of President Bush's term when they blocked John Bolton to be Ambassador to the United Nations. He was blocked by full filibuster by the Democratic Members of the Senate. The rules weren't changed then, and the rules are not to be changed now.

We have a conference coming up Monday. Let's see if we can't work through it. Let's see if we can't work in a way that restores the Senate. The Senate is that saucer that is supposed to provide a cooling opportunity to slow down a rush to judgment. Should the Senate be compelled to confirm three members to lower official appointments in the Federal Government who were illegally appointed and continued to serve in their offices after they were so found? I don't think so. I don't think so. I don't think that dispute is such that it would lead the majority leader to break the rules of the Senate, to override the plain rules of the Senate through a procedure, which is not proper and very dangerous, to get his way on this matter.

There are other things that could go wrong if this goes forward. My impression from talking to my colleagues is that there are very deep feelings about this and people have had about enough of this. There have been all kinds of abuses here about how we conduct our business. We are not going to keep accepting that because when you accept that, the loyal opposition is eroded over a period of time consistently in its ability to exercise the little powers it has, and then the Senate is weakened. Then the Senate's role as the body that slows down problems, that stands up to ATF nominations, that stands up to NLRB illegal appointments, is eroded. We do not need to do that.

I know there is a lot of feeling here.

I see my colleague Senator HATCH. He has been through this for a long time and has seen these disputes. I have seen a few myself in my 16 years—not nearly as long as Senator HATCH, who chaired the Judiciary Committee and has been ranking member on that committee. But what I will say is that this situation does not justify the nuclear option. It does not. It is a dangerous thing, and it can be addictive for the majority leader—every time he is confronted by someone legitimately using the rules of the Senate to raise questions about the majority's agenda, that they are overruled and the rule is changed so the majority leader can advance his agenda. That is what the issue is about.

I ask my Democratic colleagues, let's slow down, let's not go this way. Maybe this conference Monday will help us reach an accord and avoid a very dangerous event for the history of the Senate.

Mr. MERKLEY. Will my colleague yield for a question?

Mr. SESSIONS. I yield for a question.

Mr. MERKLEY. I have in front of me the list of the number of times the application of a rule was changed from the precedent. It was done each time under a simple majority structure, and it was done 10 times since 1985.

I pointed out earlier—I am not sure if my colleague was on the floor—that seven of these times this was done

under Republican leadership. So seven times Republicans came to the floor and said: We are going to change the application of a rule under redirection of the precedent or overruling of the precedent. I want to ask if the Senator is familiar with that because the way he was speaking, it sounded as if this conversation is about something—a procedure that had never been done. Yet it was done seven times since 1985 by my Republican colleagues.

Mr. SESSIONS. I said it is a dangerous trend and it can be addictive and it can undermine the nature of the Senate. I did not say it never happened. But to my knowledge, I would like for the Senator to list for me the number of times since 1985 the majority leader has gone before the Parliamentarian and the Presiding Officer and actually altered the rules by a vote of the Senate, overruling the Chair?

Mr. MERKLEY. I will be happy to do that. I have that in front of me. Let's start on December 11, 1985:

The Senate allows a conference report on the basis that everything included is ''relevant,'' even though multiple provisions have been ruled to violate the scope of the conference committee's authority.

The ruling of the Chair changing the precedent was reversed.

This happened again in September—

Mr. SESSIONS. Was there a vote on that?

Mr. MERKLEY. Yes.

Mr. SESSIONS. How many votes? I am curious. I know it was done before. The big time that I recall, I say to Senator MERKLEY, was the one over Federal judges, similar to this. At the end, cooler heads prevailed, a compromise was reached, and a very significant rule of the Senate was not altered.

Some of these could be technical rulings of the Chair that are not that significant, but I am interested in seeing what others the Senator might mention. I am particularly interested if there was an actual vote of the body, by the Senate.

Mr. MERKLEY. Yes. I can assure my colleague that each and every one of these involved an actual vote, and each and every one of these 10 occasions did reverse the previous precedent. That happens in two fashions.

Mr. SESSIONS. Will the Senator offer that for the record?

Mr. MERKLEY. Absolutely.

Mr. SESSIONS. I would like to look at that and see where we are.

Senator HATCH is here now.

Mr. MERKLEY. I will get the Senator a personal copy.

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

September 25, 1986: The Senate establishes that procedural motions or requests do not constitute speeches for purposes of the two-speech rule (ruling reversed 5–92).

December 11, 1985: The Senate allows a conference report on the basis that everything included is ''relevant,'' even though multiple provisions have been ruled to violate the scope of the conference committee's authority (ruling reversed 27–68).

April 28, 1987: The Senate establishes that the Presiding Officer should defer to the Budget Committee Chair on whether an amendment violates Section 201(i) of the Budget Act (ruling sustained 50–46).

May 13, 1987: The Senate establishes that a Senator may not decline to vote when it is done for the purposes of delaying the announcement of that vote (ruling reversed 46–54).

March 16, 1995: The Senate allows legislating on appropriations bills (ruling reversed 42–57) [this precedent was reversed in 1999 by resolution].

May 23, 1996: The Senate establishes that a budget resolution with reconciliation instructions for a measure increasing the deficit is appropriate (ruling sustained 53–47).

October 3, 1996: The Senate broadens the scope of allowable material in conference reports (ruling reversed 39–56) [this precedent was reversed in 2000 by language in an appropriations bill].

June 16, 1999: The Senate establishes that a motion to recommit a bill with instructions to report back an amendment had to be filed before the amendment filing deadline (ruling sustained 60–39).

May 17, 2000: The Senate establishes that it is the Chair's prerogative to rule out of order non-germane precatory (sense-of-the-Senate or -of-Congress) amendments (ruling reversed 45–54).

October 6, 2011: The Senate establishes that motions to suspend the rules in order to consider non-germane amendments post cloture are dilatory and not allowed (ruling reversed 48–51).

Mr. SESSIONS. Reclaiming the floor, Mr. President, I appreciate the Senator's sharing that. We will study them. It is absolutely a practice that can occur, but it is a very dangerous practice. The Senate is a place of a certain amount of collegiality and a certain amount of good judgment and understanding and respect for the body. Sometimes you can carry out a procedure that may be dubious but within the realm of acceptable procedures, and sometimes you can feel and understand that is a dangerous alteration of the precedents of the Senate. That is where I am afraid we are with this vote.

Mr. HATCH. Will the Senator yield?

Mr. SESSIONS. I will yield for a question from Senator HATCH.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Utah.

Mr. HATCH. It makes a difference between issues where the Chair has been overruled rather than the nuclear option which changes the rule, which breaks the rule and changes it. That is a significant difference. That is what is being done here by a mere majority vote.

The majority wants to change a very important rule. If we go down that road, I am going to tell you, the majority is going to be a very sorry majority in the future because they may be a minority. This body has always protected the rights of the minority, whether Democratic or Republican. It is what made it the greatest body in the world. We are about to destroy that for no good reason.

Mr. SESSIONS. Mr. President, I will be pleased to yield to the Senator from Utah and look forward to hearing his remarks. He is a man of great expertise on this particular issue.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Let me say that there are differences in how the rules are interpreted from time to time. From time to time the Chair has been overruled. I have been here when it has. I have only been here 37 years, and I have never seen anything like this in the whole 37 years.

I have to say that this is a dangerous thing to do. I predict that if our colleagues on the other side—all of whom I care for—if they do this, they are going to rue the day they did it. It is that simple. They can say: Oh, it is just an eensy-teensy little change. It is not. It is a monumental change. There is going to be a tremendous price to pay for it, to the detriment of our country—it is just that simple—and certainly to the detriment of the Senate, the greatest deliberative body in the world.

It is hard for me to understand, over two NLRB partisans whom the President just recess-appointed, ignoring the rules of the Senate, and over Cordray, who probably under any other circumstances would get through easily, but there is very good reason why he should not go through this way.

OBAMACARE

Mr. President, I rise to speak on what is known as ObamaCare and what the Obama administration did last week, hoping the American people were not paying attention, that impacts huge parts of the President's signature domestic policy achievement as our Nation was celebrating the Fourth of July. I am talking about the administration's decision to suspend for a year—conveniently past next year's election, which is very interesting to me—enforcing what is known as the employer mandate, the requirement that businesses offer insurance to their employees or face the penalty. And then a rule was issued by the Department of Health and Human Services last Friday stating that it would not verify people's incomes before giving out premium subsidies. My gosh, we have fraud all over the Federal Government, and they do something this stupid and undesirable?

I am certainly glad employers got some relief. It is quite a message from the Obama administration, quite a message the Obama administration is sending the struggling families and individuals who will get no relief from this monstrosity of a law and its burdensome individual mandate tax. Republicans in Congress believe this is unfair as such. Senator THUNE spearheaded a letter to President Obama, which I enthusiastically signed, urging him to permanently delay the whole entire law and treat individuals the way he is going to treat businesses. I am glad it has been put over for businesses, even though I question why it was put over for this next year. But

why not do it for the individuals who are suffering from it? If it is good for the goose, it should be good for the gander. Shouldn't the Obama administration give the same relief to everyone?

Furthermore, I would like to point out that we have always known this law was a budget buster. With the employer mandate delayed, I have joined with a group of Republican committee leaders in the House and Senate asking for the Congressional Budget Office to get us an updated cost estimate of the bill. I can't say what CBO will find, but I have a feeling that ObamaCare's price tag will continue to soar. It is already off the charts. Everybody knows it is an abominable bill, and that includes Democrats as well.

What happened last week is just the latest in a series of confirmations that the President's health care is simply not ready for prime time. Unfortunately, it is the American people who pay the price for the largest expansion of government in generations. They will pay the price through higher taxes. They will pay the price through higher health care costs and insurance costs. They will pay the price with more and more government regulations and debt. They will pay the price when they are forced into what are called exchanges that are simply not ready and unlikely to be ready in the near future.

This law, which was jammed through Congress on a purely partisan vote, is simply too big to work. The lesson is that asking government to do this much—when those of us who fought it tooth and nail said at the time it amounts to a government takeover of one-sixth of the American economy—will not succeed and cannot succeed. That is a lesson the Obama administration doesn't seem to get, doubling down on selling ObamaCare that is less popular today than when the President signed it into law. In fact, the White House is rolling out a massive multibillion-dollar PR campaign using taxpayer dollars to try to convince the American people that it is all the administration promised, shaking down the health care industry, professional sports teams, and movie stars in the process.

Where is it going to end? What is the matter with this administration? Can't they just live with the facts and acknowledge that this is a dog? In fact, a cynic might argue that ObamaCare was designed to fail in order for the Federal Government to step in for a true, European-style single-payer system that many on the extreme left wanted all along. In other words, socialized medicine with the Federal Government controlling every aspect of our lives from a medicine and health-care standpoint.

Now it seems as though every day we learn about more and more problems with ObamaCare. What do we know about it less than 4 months out from the open enrollment in the Federal and State health insurance exchanges which are supposed to occur on October 1?

We have heard from countless experts who say the exchanges will be rife with issues once they are supposedly up and running. Indeed, those experts have predicted everything from ''glitches'' to ''consumer horror stories.''

Two GAO reports released in June confirm that the Obama administration is ill-equipped for the implementation of both the federally facilitated health insurance exchange and the so-called Small Business Health Option Program Exchange. And that is two reports from GAO saying the administration is ill-equipped to implement those federally facilitated health insurance exchanges. Citing the programs' delays and missed deadlines, the GAO concluded that there is potential for ''implementation challenges going forward.''

While we have been hearing about the problems with the exchanges for months now, we have not heard an explanation from the administration as to how—despite all of these reports—all of this is supposed to be up and running by October 1. I hope I am wrong, but I have a feeling come October millions of Americans are going to find themselves unable to navigate these waters.

Sadly, the problems with the exchanges aren't the only difficulties with ObamaCare. Over the last several months we have heard numerous reports about the problems at the Internal Revenue Service. Let's face it. The IRS has never been beloved. Indeed, millions of Americans loathe and fear the IRS, and the recent scandal surrounding the targeting of conservative groups has not helped the agency's reputation either.

At the heart of this recent scandal, there are claims by the IRS that they were simply unable to manage the increased workload that came with an influx of applications of groups applying for tax exempt status under 501(c)(4). According to the IRS officials, the increase in applications were so massive that examiners had to find new ways to categorize and screen the documents submitted by these groups. They say that was the main cause of the targeting scandal.

Let's assume these arguments are true for a moment. When all is said and done, the number of applications of groups applying for 501(c)(4) status increased by 1,700 over a 4-year period. The IRS was apparently so flummoxed by an increase of less than 2,000 applications that it had to resort to inappropriate and potentially illegal measures. Give me a break.

If this is true, the country is in real trouble. If the IRS cannot manage an increase of 1,700 applications of groups applying for tax exempt status, how will it handle its significant role in implementing ObamaCare or even handling the so-called premium supports? Under the so-called Affordable Care Act, premium subsidies—complex tax credits designed to defray the costs of purchasing health insurance based on household income—will go to an estimated 7 million tax filers according to the Joint Committee on Taxation. Within 2 years, that number will nearly double. And they can't take care of 1,700 applications for 501(c)(4) that are basically and relatively simple?

In other words, the number of premium subsidy applications will jump from zero to 7 million in just 1 year. That is 7 million applications for people across a wide income spectrum claiming subsidies that did not exist before. Only God knows how many of those claims are going to be made fraudulently since they don't seem to be able to handle them.

Basically, the Obama administration would have us believe that while a 4-year increase of 1,700 applications for tax exempt status was enough to give the agency fits, it is perfectly capable of handling 7 million new filings for a brandnew health care entitlement. On top of that, they want us to believe they can continue processing these subsidies as they double in number over the first 2 years. Needless to say, I am more than a bit skeptical.

Of course, it is difficult to figure out exactly what the Obama administration expects the American people to believe when it comes to the IRS implementing ObamaCare. That is because despite all the upcoming deadlines, it is still not clear how the agency plans to fulfill this new responsibility; and despite numerous Congressional inquiries—as well as those from GAO and the Treasury Inspector General for Tax Administration, or TIGTA—no one really knows how the Affordable Care Act office in the IRS is going to work.

One of the few things we know for sure is that the person who headed the IRS division that was responsible for targeting conservative organizations now heads the division responsible for implementing ObamaCare. How lucky can we be? That is hardly a comforting thought. Make no mistake, processing these complex premium subsidies will not be a walk in the park. These credits are both advanceable and refundable—meaning they will be paid out first and verified later. Some have referred to this process as ''pay and chase.''

Many of my Democratic friends have referred to tax expenditures they don't like as ''spending through the Tax Code.'' That label is usually not accurate, but when we are talking about refundable credits, it is precisely on target. The problem is that over the years, the IRS has struggled to administer these types of tax credits. One needs to look no further than the earned income tax credit, or the EITC, to see the inherent problems with refundable credits.

In a report issued this past April, TIGTA found that 21 to 25 percent of total EITC payments were improperly given out. If you assume that same percentage of improper payments will apply to the $1 trillion we will spend on

ObamaCare premium subsidies—which is fair, due to the fact that the IRS has no way of verifying household income, and now the Department of Health and Human Services said it will not even try to verify a person's income—we could be looking at $210 billion to $250 billion in improper payments over the next 10 years. When is it going to end? When are the taxpayers going to get a break? This administration doesn't seem to know how to get us there.

Some of that will be the result of fraud and some of it will simply be due to filing errors. Either way, if the IRS's track record with refundable credits is any indication, we are looking at hundreds of billions of dollars in improper payments when it comes to the ObamaCare premium subsidies. Now with the Obama administration abandoning any income verification, we are left with a policy that is little more than an honor system for hundreds of billions of dollars of premium subsidies.

I will say it again: An honor system at a time when the Finance Committee and the administration are trying to crack down on improper government payments both within the tax system and our Federal health programs. If the definition of insanity is doing the same thing over and over expecting different results, then this is the definition of insanity on steroids. Couple that with the already soaring pricetag of the subsidies and we have a disaster on our hands.

In his fiscal year 2012 budget, President Obama put the cost of the first year of premium subsidies at nearly $16 billion. In his most recent budget, that number soared to nearly $22 billion without any additional explanation.

Why are these costs going up? There are a number of possible explanations. For example, there is the fact that due to the cost imposed by ObamaCare, more and more employers are opting to drop coverage, thereby pushing more and more people into the exchanges subsidized by these very same tax credits. At the same time, we know in order to avoid providing health care benefits, many employers are moving employees into part-time work, which, once again, pushes more people into receiving premium subsidies in order to purchase health insurance.

Of course, there is the looming fact that despite the President's claims that his health care law would reduce the cost of health insurance, the cost of insurance premiums has continued to skyrocket. All of these are potential explanations of why the estimated cost of the premium subsidies has gone up in the President's budget.

Yesterday a group of my Senate colleagues and I sent a letter to Secretary Lew and Secretary Sebelius asking for an in-depth analysis as to how much of a burden the new health insurance exchanges will be on the Federal budget given the skyrocketing pricetag of these premium subsidies. This is a reasonable question given the magnitude of America's debt.

Between the dramatically increasing costs, the daunting tasks of administering these credits through the Tax Code, and now the administration is pulling back antifraud requirements, the chances for success are extraordinarily slim.

As I said earlier, this law is too big, too cumbersome, too inclusive, and too costly to work. I have never supported it, and for good reasons. What is most disconcerting is that it is the millions of Americans who work hard every day to pay their bills, put food on their tables, and send their children to school who will bear this burden. For their sake, the best solution is a permanent delay of the whole law—and not just for the business sector but for everybody. That is what we need to do.

We have to get rid of this pay-and-chase system that is going on right now where the government just pays in accordance under the honor code they described and later have to chase those who have defrauded the government. It is just unbelievable.

Well, look at the premium subsidies. These are tax credits in ObamaCare designed to defray the cost of purchasing health insurance. These are going to go to some 7 million tax filers in households earning as much as $94,000 a year. How many people who are making much more than that will claim they are making less than $94,000 a year? Well, if we look at the past, there is going to be a lot of them.

What is the IRS going to be able to do? They will not be able to approve it because they don't have the mechanisms to do it. My gosh.

The administration said they are just going to rely on the filer to self-report their income to get access to the credits. Give us a break. My gosh. Like I said, the projected figure for subsidy expenditures has gone from $16 billion to $22 billion in just a couple of years. It is mind-boggling that they get away with it. It is mind-boggling that the American people have not risen up in rebellion against this stupid bill, and it is mind-boggling to me how my colleagues on the other side continue to defend this monstrosity.

Every day we hear about more and more problems with it. Every day we hear about more and more costs. Every day we hear about more and more fraud. Every day we hear about people in the government who don't understand it and can't figure it out.

When are we going to grow up and realize this is a dog and it is hurting America? I will be honest. I believe within a year or two the President is going to throw his hands in the air and say: This is not working. We have to go to a single-payer system—in other words, socialized medicine where the government will control all of our lives and will determine who gets health care and who doesn't. I have to say that is where we are headed. I hope I am proven wrong in the future, but I know I am going to be proven right. I can just see it. If it happens, it will have been done by our friends on the other side—100 percent—who voted for this dog. They don't seem to recognize it is eating America alive.

I don't understand it. I love my colleagues on the other side. We have been friends for a long time. I have been here 37 years. There are only two Senators in that 37-year period whom I thought had no real reason to be here. I have loved everybody else, some more than others, of course.

The fact is what is happening has happened because of the Democratic side of this floor, and we have to get some heroes over there to start standing and saying: We are not going down that road. We are not going to become socialism revisited, even though many of their supporters want that, as is evident to anybody who looks at it. When is our media going to take up and realize this is what is happening to our country and it is wrecking it. On top of that, we have this absolutely idiotic desire on the part of my friends on the other side to change the rules—to break the rule to change it.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TOO BIG TO FAIL

Mr. BROWN. Mr. President, there is broad agreement that overleveraged financial institutions significantly contributed, to put it mildly, to the 2008 financial crisis and that they were bailed out because everyone knows they are too big to fail.

Years later—5 years later now—there is an implicit assumption that the largest megabanks—the five or six largest banks in the country—are still too big to fail. That means the markets give them funding advantages that experts estimate are as high as 50 or 60 or 70 or even 80 basis points.

That means when they go in the capital markets, they can borrow money at close to 1 percent. Eighty-eight basis points is fourth-fifths of 1 percent. They can borrow money at a lower cost than virtually anyone else in our economy.

Studies from Bloomberg have shown that this can mean a subsidy of upward of $80 billion to these five, six, seven megabanks—these large megabanks.

Last year, as a result, my colleague Senator VITTER and I began to push the banking regulators—the Federal Reserve, the Office of the Comptroller of the Currency, and the FDIC, the Federal Deposit Insurance Corporation—to use stronger capital and leverage rules to end this too-big-to-fail subsidy.

There is now bipartisan agreement that imposing more stringent capital