consequences and the like. But during the tenure of the current majority leader an unprecedented number of bills have simply sprung to life out of the majority leader's office.

Many of my colleagues, including Members of Senator REID's own party, have been left wondering why it is the committees actually even exist in a world where bills simply come to the Senate floor under rule XIV without the sort of deliberation and consideration they should get in committees before arriving here. When legislation arrives on the floor, Senators are routinely denied an opportunity to offer the amendments they see fit and to have debate and votes on those amendments.

To give some perspective—and I know some people will say the American people are not interested in the process, they are interested more in the policy, but this demonstrates why the process is so important to getting the right policies embraced—during the 109th Congress, when this side of the aisle, Republicans, controlled this Chamber, Senate Democrats offered more than 1,000 separate amendments—1,043 separate amendments—to legislation. During the 112th Congress, when our Democratic colleagues were in charge, Republicans were only allowed to offer 400 amendments—1,043 to 400, a big difference.

During the 109th Congress, when Republicans controlled this Chamber, there were 428 recorded votes on Senate amendments—428. In the 112th Congress, there were 224—a little more than half of the number.

Since becoming majority leader, Senator REID has blocked amendments on bills on the floor no fewer than 70 times. In the language of Senate procedure, we call that filling the amendment tree, but what it means is the minority is effectively shut out of the ability to shape legislation by offering amendments on the Senate floor. And that is no small thing. Again, I represent 26 million people in the State of Texas. Being a Member of the minority, when Senator REID blocks any amendment I wish to offer to a bill, he has effectively shut out of the process 26 million Texans. And it is not just my State, it is every State represented by the minority.

As a comparison, the previous Senate majority leader, Senator Bill Frist of Tennessee, a Republican, filled the amendment tree only 12 times in 4 years. So 70 times under Senator REID, 12 times for Senator Frist. And before him, Majority Leader Tom Daschle, a Democrat, filled the tree only once in 1½ years—once in 1½ years. When Trent Lott was the majority leader, a Republican, he did it 10 times in 5 years. George Mitchell, a Democratic majority leader, did it three times in 6 years. Majority Leader Robert C. Byrd, who was an institution unto himself here in the Senate, did it three times in 2 years. And finally, Senator Bob Dole of Kansas, the majority leader, a Republican, did it seven times in 3½ years.

My point is not to bore people with statistics but to point out the Senate has changed dramatically under the tenure of the current majority leader in a way where Members of the Senate are blocked from offering amendments to legislation in the interest of their constituents. As majority leader, Senator REID has denied those rights to the minority and the rights of the people we represent. When he refuses to let us offer amendments and debate those amendments, he refuses to let us have real debate and he is effectively gagging millions of our constituents.

One more time I would like to remind Senator REID of what he promised 6 years ago. He said: As majority leader, I intend to run the Senate with respect for the rules and for the minority 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.

I would also like to remind our colleagues what President Obama said in April of 2005, when he was in the Senate. He said: If the majority chooses to end the filibuster, if they choose to change the rules and put an end to democratic debate, then the fighting, the bitterness, and the gridlock will only get worse.

My point is to say the Senate has been transformed in recent years into an image of an institution the Founders of our country would hardly recognize, nor would previously serving Senators who operated in an environment where every Senator had an opportunity to offer amendments to legislation and to get a vote on those amendments; where the minority's rights were protected by denying the majority the right to simply shut out the minority, denying them an opportunity to offer or debate important pieces of legislation.

That is what has happened under the current majority leader, and that is why I believe those meetings, such as the one we had in the Old Senate Chamber this past Monday night, are so important. But we do have to rely on the facts. Facts can be stubborn, but I think our debate ought to be based on the facts and on a rational discussion of what the Framers intended when they created the Senate and its unique role—unique not just here in America but to all legislative bodies in the world.

HEALTH CARE

Madam President, I would like to turn to another topic. Now that we have gotten past the nuclear option, at least for a time, I think it is important we return to important issues that actually affect the lives of the American people in very direct ways, and health care is one of them.

During the Fourth of July recess, the administration unilaterally delayed several provisions of the so-called Affordable Care Act, otherwise sometimes known as ObamaCare. What they did specifically is they delayed enactment of the employer mandate.

It was an implicit acknowledgement by the administration that ObamaCare is actually stifling job creation and prompting many businesses to turn from full-time employment to part time. In fact, there are now 8.2 million Americans working part-time jobs for economic reasons when they would like to work full time. That number is up from 7.6 to 8.2 million since March. And a new survey has found that 74 percent of small businesses are going to reduce hiring, reduce worker hours, or replace full-time employees with part-time employees in part in response to ObamaCare.

The House of Representatives has drafted a bill that would codify the employer mandate delay that the administration announced earlier this month. In other words, they want to uphold the rule of law. Yet the President is now threatening to veto the very legislation that enacts the policy that he himself announced, which is truly surreal. The House bill on the employer mandate would do exactly what the President has already announced he would do unilaterally. There is no conceivable reason that I can think of for the administration to oppose this legislation—unless, of course, President Obama thinks he can pick and choose which laws to enforce for the sake of his own convenience. I am afraid he does believe that, and the evidence goes well beyond ObamaCare.

Yesterday afternoon I listed several examples of the administration's persistent contempt for the rule of law.

I mentioned the government-run Chrysler bankruptcy process in which the company-secured bondholders received far less for their loans than the United Auto Workers pension funds.

I mentioned the subsequent Solyndra bankruptcy in which the administration violated the law by making taxpayers subordinate to private lenders.

I mentioned the President's unconstitutional appointments to the National Labor Relations Board and the Consumer Financial Protection Bureau. You don't have to take my word for it; that is the decision of the court of appeals. The case has now been taken up by the U.S. Supreme Court to define what the President's powers are to make so-called recess appointments. But one thing that is absolutely clear is that the President—the executive branch—can't dictate to the Senate when we are in recess, thus empowering the President to make those appointments without the advice and consent function contained in the Constitution; otherwise, the executive branch will have no checks and no balances on its power, and there will be no power on the part of the Senate to do the appropriate oversight and to confirm the President's nominees.

In addition to his recess appointments, I mentioned yesterday his decision to unilaterally waive key requirements in both the 1996 welfare reform

law and the 2002 No Child Left Behind Act, and I also mentioned his refusal to enforce certain immigration laws.

What the House of Representatives is trying to do with its employer mandate bill is to make sure that the same rules apply to everyone and that the executive branch and the White House in particular don't just pick winners and losers when it comes to the Affordable Care Act, Obamacare.

If this President or any President is allowed to selectively enforce the law based on political expediency, our democracy and adherence to the rule of law will be severely weakened.

The principle at stake is far more important than the particular legislation we are talking about. It is about the constitutional separation of powers between the executive and the legislative branches of government. By assuming to be able to unilaterally suspend laws that prove inconvenient, the President is showing disdain for those checks and balances on executive authority as well as his oath, where he pledges to faithfully execute the laws of the United States.

Those of us who support repealing ObamaCare in its entirety and then replacing it with real health care reforms that reduce costs and expand patient choice and access to quality care, while protecting Americans with preexisting conditions and saving programs such as Medicaid and Medicare, believe ObamaCare ought to be repealed in its entirety and replaced with commonsense reforms that will actually bring down the costs, increase the quality, and preserve the patient-doctor relationship when it comes to making health care choices.

Our preference would be to repeal the entire law, but we would like to work with the President and our friends across the aisle now that it appears, according to the administration's own actions, that they actually believe ObamaCare is not turning out as it was originally intended in 2010. Indeed, one of the principal architects in the Senate, the chairman of the Senate Finance Committee, Senator MAX BAUCUS of Montana, has told Secretary Kathleen Sebelius of Health and Human Services that the implementation of ObamaCare is turning out to be a train wreck. And indeed it is.

Unfortunately, the President is still refusing to acknowledge the growing evidence that ObamaCare cannot perform as was originally promised. We know that the promise that if you like the health care coverage you have, you can keep it that the President so famously made—that is not true. Seven million Americans have lost their health care coverage as ObamaCare is being implemented and many more as employers are incentivized to drop their employer-provided coverage, leaving American families to find their health insurance elsewhere. The promise the President made that the average cost of health care insurance for a family of four would go down by $2,400—we know it has gone up by $2,400 since then.

Unfortunately, it appears the wheels are coming off of ObamaCare, and the people who will suffer the most are hard-working American families we are pledged to protect and help. What we ought to be doing rather than denying the obvious is working together to try to enact commonsense reforms.

It is not an answer for the President to discard the politically inconvenient portions of ObamaCare and kick off implementation until after the next election. To me, that is one of the most amazing things about the way ObamaCare has been implemented. It passed in 2010, but very little of it actually kicked in before the Presidential election of 2012. So there is no real political accountability, no real opportunity for the voters to voice their objection once it had been implemented, if it had been implemented on a timely basis. And now, because it has proven to be politically inconvenient, the President has proposed to kick off implementation of the employer mandate until after the 2014 midterm congressional elections. That is no way to have accountability for the decisions we make here. That is the opposite.

We are simply urging the President to support the rule of law and to make sure the same rules apply to everyone—apply to Members of Congress and apply to everyone in this great country of ours. But when the administration chooses to selectively enforce or not enforce provisions of the law or issue waivers for the favored few and the rest of us end up with the harsh reality of this law that is not working out as originally intended, it undermines the rule of law and the public's confidence that the same rules will apply to everyone. That shouldn't be too much to ask.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. RUBIO. 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. RUBIO. Madam President, there has been a lot of news over the last 24 hours about the nuclear option and how that has been averted here in the Senate and what good news that is for the institution. I do value the Senate, and I do value the ability of individual Senators—and particularly the minority, which I hope I won't be a part of forever—and of the minority to speak and to be heard. That is one of the things that make this institution unique.

But I think we have to answer a fundamental question about why we have these rules in place and in particular why we have these rules in place when we are dealing with nominees, people who are nominated to the Cabinet and other executive positions. It is because the Constitution gives the Senate the power to advise and consent, to basically review these nominees and find out information about them and then decide whether they should be confirmed.

There are two different standards with regard to that. The first standard is whether the nominee should be able to go forward, and that requires a supermajority vote—60 votes—to continue debate. It is kind of arcane and I don't want to do a tutorial on the Senate, but let me say that if you can't get those 60 votes, then you have to continue to debate that nominee. That is an important tool—not to obstruct but should be used judiciously. It is a tool that should be used to make sure that this process is being respected and that people are answering critical and valid questions. It is an important tool to use. It needs to be used judiciously. It needs to be used in a limited way. You can't do that on everybody. You shouldn't do that on everybody. Quite frankly, the minority has not done it on everybody, nor have I. I have been very careful in its use and have tried to ensure that when we do use it and when I do use it, I use it for reasons that are valid.

It is with that in mind that I am very concerned about a nominee who will be before this body as early as today on a 60-vote threshold about whether to cut off debate on this individual and proceed to final confirmation, and that is this nominee for the Secretary to head the Labor Department, which is a significant agency of our government that, quite frankly, has a direct impact on the ability of businesses to grow and hire people and so forth. This is an important nomination and one that I think deserves careful scrutiny.

Now, let me be frank and up-front. I have significant objections to this nomination on the basis of public policy, and I have stated that in the past. I believe this individual, Thomas Perez, who is currently an Assistant Attorney General, is a liberal activist who has used his position—not just in the Department of Justice but in other roles he has played—to advance a liberal agenda that, quite frankly, is out of touch with a majority of Americans and that I believe would be bad for our economy, hence the reason I don't think it is a good idea for him to head the Labor Department. But the President has a right to his nominees.

So that is a reason to vote against this nomination. That in and of itself may not always be a reason to block a nomination from moving forward. Where I do think there is a valid reason to block someone's nomination from moving forward is when that individual has refused to cooperate with the process that is in place to review their nomination.

When you are nominated to serve in the Cabinet or in the executive branch, you get asked questions about things you have done in the past, things you

have said in the past, and you are expected to answer those fully and truthfully so that the Members of this body can make a decision about your nomination based on the facts. I don't know of anyone here who would dispute that, including people in the majority. Irrespective of how you feel about the nominee, every single Senator here—and through us, the American people—has a right to fully know who it is we are confirming, whether it is to the bench or to the Cabinet or to some other executive position. That is a right that is critically important.

When a nominee refuses to cooperate with that process, I believe that is a valid reason to stand in the way of their confirmation and to block it from moving forward until those questions are fully and truthfully answered. I do believe that is a reason not to vote for what they call cloture around here. I think that is a case in point when it comes to this Labor nominee, Mr. Perez, and I want to take a few moments to argue to my colleagues why it is a bad idea for both Democrats and Republicans to allow this nomination to move forward until this nominee answers the questions he has been asked by the Congress. Let me give the background.

There was a case filed by the City of St. Paul in Minnesota, and this case had to do with a legal theory called disparate impact. It is not really on point per se, but it basically says that you look at how some policy is impacting people, and even if there wasn't the intent to discriminate against people, if the practical impact of it was that it was discriminating against people—let's say a bank was giving out loans, and although the loan officer wasn't looking to deny loans to minorities, if the way they had structured the program meant that fewer minorities were getting loans than should be under a percentage basis, then under this theory you would be allowed to go after whatever institution did that. That is the theory which is out there in law.

The City of St. Paul had a challenge to that in court that chose to define exactly what that meant, and it got all the way to the Supreme Court. It was on the Supreme Court's docket. At the same time, the Justice Department was being asked to intervene in a whistleblower case regarding Housing and Urban Development. Again, it would take too long to describe exactly why that is important, but the bottom line is that the case against the City of St. Paul, the separate case—the whistleblower case—because of the way the law is written, they couldn't move forward on that case unless the Department of Justice intervened. And that is where the nominee, Mr. Perez, stepped in. He is an enormous fan of the disparate impact theory. In fact, he had used it to go after banks, of all things, in his time at the Department of Justice.

At some point in the future I will come to the floor and detail why I object to his nomination, appointment, and confirmation, but today I am just making the argument as to why it is a bad idea to move forward on this nomination until certain questions are answered.

This is where Mr. Perez steps in. What he did is he basically went to the City of St. Paul and said: Look, if you drop your Supreme Court case, we will not intervene in the whistleblower case. It is what is known in Latin as a quid pro quo—you do this for me, I will do that for you. In essence, City of St. Paul, drop your Supreme Court case and I will not intervene on behalf of the Department of Justice.

He argues reasons why he did that were based—he told the House committee the reason why I did that is because I thought it was a bad case, I had bad facts and I didn't want to move forward on the HUD whistleblower case anyway. He claimed that. But, in fact, a subsequent investigation found that a career attorney in the Department of Justice actually did not feel that way at all. A career attorney who was involved in this case believed it was a good case and, in fact, at a meeting about the case he expressed concern that this looked like we were ''buying off'' the City of St. Paul.

Right away the nominee had, frankly, misled the congressional committee when he argued it was a bad case, everybody agreed that the facts were bad. In fact, that is not true. The career prosecutor who was looking at this case wanted to move forward and was concerned that the way this looked was that it was a buy-off.

Then the nominee was asked: By the way, did you use your personal e-mail to conduct this deal? Did you e-mail with people about it? We understand your Federal account, we have access to that, but did you use your personal accounts?

You know, we all have business accounts and we all have personal accounts. The question was did you use your personal accounts to cut this deal or negotiate this deal or even talk about it with anybody? His answer was he could not recall, he had no recollection of that.

Subsequently, however, it was discovered that, in fact, on at least one occasion initially, he had used his e-mail to discuss something with someone at the City of St. Paul. That is when the House oversight committee stepped in and it asked him voluntarily and the Justice Department voluntarily to produce any e-mails from his private account that had to do with his official capacity.

Understand the request. It wasn't: Send us e-mails between you and your children or between you and your family or about you planning your vacation. What they asked for were any e-mails from your private accounts that have to do with your official capacity.

The Justice Department responded to that request by saying: We have found 1,200 instances of the use of his personal e-mails for official business. We found at least—the number at least was 34, but then 35—instances where it violated the open records laws of the Federal Government. So he was voluntarily asked to produce these e-mails to the House. He refused.

The House then subpoenaed these records, a subpoena which has the power of Congress behind it basically compelling you: You must produce it now. Again, he refuses to produce these e-mails.

What we have before the Senate today is a nominee to head the Labor Department of the United States of America who refuses to comply with a congressional subpoena on his e-mail records regarding his official business conduct. He refuses to comply; will not even answer; ignores it.

Here is what I will say to you. How can we possibly vote to confirm somebody if they refuse to produce relevant information about their official conduct? Think about that. This is an invitation for any official in the executive branch to basically conduct all their business in their private accounts because they know they will never have to produce it, they can ignore the Congress.

The nominee, Mr. Perez, hides behind the Department of Justice and says: They are handling this for me. But the problem is the Department of Justice doesn't possess these e-mails. These are his e-mails from his personal account that he refuses to produce.

If, in fact, there is nothing to worry about—and I am not claiming—I have not seen the e-mails. I don't know what is in them. None of us do. That is the point. The fact is we are now being asked to vote to confirm someone—not just to confirm someone, to give him 60 votes to cut off debate on the nomination of someone who is in open contempt of a congressional subpoena and repeated requests, including a bipartisan request. I have it here with me, a bipartisan request signed by Mr. ISSA of California and Mr. CUMMINGS, the ranking minority member, dated May 8, 2013:

> We write to request you produce all documents responsive to the subpoena issued to you by the committee on April 10, 2013, regarding your use of a non-official e-mail account to conduct official Department of Justice business. The Department [Justice Department] has represented to the Committee that roughly 1,200 responsive e-mails exist. To allow the Committee to fully examine these e-mails, please produce all responsive documents in unredacted form to the Committee no later than Friday, May 20, 2013.

The answer: Nothing, silence, crickets.

This is wrong. How can we possibly move forward on a nominee—I don't care what deal has been cut—how can we possibly move forward on someone until we have information that they have been asked for by a congressional committee? This is outrageous. If ever there was an instance where someone's nomination should not move forward, this is a perfect example of it.

I am not standing here saying deny this nominee 60 votes because I think he is a liberal activist—I do, and I think that is the reason why he should not be confirmed. What I am saying to my Republican colleagues is: I don't care what deal you cut, how can you possibly agree to move forward on the nomination when the nominee refuses to comply with a congressional subpoena to turn over records about official business at the Justice Department?

By the way, we are not confirming him to an Ambassador post in some obscure country halfway around the world. This is the Labor Department. This is the Labor Department.

I am shocked that there are members of my own conference who would be willing to go forward, go ahead on a nomination like this, who are willing to give 60 votes on a nomination like this on a nominee who has, frankly, flat out refused to comply with a congressional subpoena and answer questions that are legitimate and important. We are about to make someone the head of one of the most powerful agencies in America, impacting the ability of businesses to grow and create jobs at a time, frankly, when our economy is not doing very well, we are about to confirm someone to chair that agency, head up that agency when that individual has refused to comply with a legitimate request. How can we possibly go along with that?

I understand how important it is to protect the rights of minorities here. I understand how important it is to protect the right of the minority party to speak out and block efforts to move forward. But, my goodness, what is the point of even having the 60-vote threshold if you cannot use it for legitimate reasons? This is not me saying I am going to block this nominee until I get something I want. This is a nominee who refuses to cooperate, who flat out has ignored Congress and told them to go pound sand. And you are going to vote for this individual and move forward before this question is answered?

I implore my colleagues, frankly on both sides of the aisle—because this sets a precedent. There will not be a Democratic President forever and there will not be a Senate Democratic majority forever. At some point in the future you will have a Republican President and they are going to nominate people and those people may refuse to comply with a records request. You are not going to want those records? In fact, you have in the past blocked people for that very purpose.

So I ask my colleagues again, how can you possibly move forward a nominee who refuses to comply with giving us the information we need to fully vet that nomination? This is a serious constitutional obligation we have. Do we have an obligation to the Senate and to this institution, being a unique legislative body? Absolutely. But we have an even more important obligation to our Constitution and to the role the Senate plays in reviewing nominations and the information behind that nomination, and we are being blatantly denied relevant information. We have colleagues of mine who say it doesn't matter, move forward. This is wrong. It is not just wrong, it is outrageous.

Again, I do not think that we should use—nor do I think we have, by the way, used the 60-vote threshold as a way to routinely block nominees from moving forward. You look at the record. This President has done very well with his nominations, across the board—judiciary, Cabinet, executive branch. But, my goodness, can we at least agree that I have a right as a Senator from Florida—as all of you have a right as Senators from your States—to have all the relevant information on these nominees before we move forward?

I am telling you, if you are going to concede that point, then what is the point of having the 60-vote threshold if you can never use it for legitimate purposes?

I would argue to my colleagues today, let's not have this vote today. Let's not give 60 votes on this nominee until he produces these e-mails and we have time to review them so we can fully understand what was behind not just this quid pro quo deal but behind his public service at the Justice Department as an assistant attorney general, frankly confirmed by this Senate with the support of Republicans.

This is not an unreasonable request. For us to surrender the right to ask these questions is a dereliction of duty and it is wrong. If ever there was a case in point for why the 60-vote threshold matters, this is an example of one. I am telling you, if this moves forward, there is no reason why any future nominee would not decide to give us the same answer; that is, you get nothing. I tell you nothing. I will tell you what I want you to know. Then we are forced to vote up or down on someone on whom we do not have information. And that is wrong.

There is still time to change our minds. I think this is a legitimate exercise—not forever. Let him produce these e-mails. Let us review these e-mails. Then bring him up for a vote and then you can vote on him, whether you like it or not based on all the information. But to allow someone to move forward who is basically telling an oversight committee of Congress: I don't have to answer your questions, I don't have to respond to your letters, I ignore you?

I want you to think about the precedent you are setting. I want you to think about how that undermines the constitutional—not just the right, the constitutional obligation of this body to produce advice and consent on Presidential nominees, and I think this is especially important when someone is going to be a member of the Cabinet and overseeing an agency with the scope and the power of the Labor Department.

I still hope there is time to convince as many of my colleagues as possible. I do not hold great hopes that I will convince a lot of my Democratic colleagues, but I hope I can convince a majority of my Republican colleagues to refuse to give the 60 votes to cut off debate on this nominee until Chairman ISSA and the oversight committee get answers to their questions that frankly we would want to know. They take leadership on asking these questions but we are the ones who have to vote on the nominee. They are doing us a favor asking these questions. We should, at a minimum, stand here and demand that these be answered before we move forward.

I yield the floor.

The PRESIDING OFFICER (Ms. BALDWIN). The Republican leader.

OBAMACARE

Mr. MCCONNELL. As I mentioned yesterday, I am glad the majority saw the light and stepped back from committing a tragic mistake. It is good news for our country and good news for our democracy. Now that that is behind us, we can get back to debating the issues our constituents are the most concerned about, and for a lot of my constituents they are concerned about ObamaCare.

This is a law that was basically passed against their will and it is a law that is now being imposed upon them by a distant bureaucracy headquartered here in Washington. If the folks in DC are to be believed, its implementation is going just swimmingly. The Democratic leader in the House of Representatives called it ''fabulous.'' The President said the law is ''working the way it's supposed to.'' And my friend the majority leader said the other day that ''ObamaCare has been wonderful for America.''

Fabulous? Wonderful? These are not the kinds of words one normally associates with a deeply unpopular law, or one that media reports suggest is already having a very painful impact on Americans we represent. Which sets up an important question for Senators to consider: Just who are we prepared to believe here when it comes to ObamaCare: the politicians who have developed it or the people who are reacting to it?

The politicians in Washington who forced this law on the country say everything is fantastic. They spent millions on slick ads with smiling actors and sunny-sounding scripts that blissfully—I am being kind here—blissfully dismiss what the reality of this law will actually look like to so many Americans, or what the reality of the law has already become for some of them. That is why the people have taken an entirely different view. They are the ones worried about losing the coverage they like and want to keep, which is understandable given the growing number of news stories about insurance companies pulling out of States and markets altogether. They are the ones worried about their jobs and pay checks.