

Countless independent experts, health care professionals, and insurance authorities across the country all warned—all of them warned—about what we are seeing right now. So did many of us. If only the Democrats who run Washington had listened. But the President needed their votes for a bill he hoped would define his legacy, so they gambled that their constituents would just learn to live with ObamaCare and forget the false promises. That was the gamble. In other words, Washington Democrats were specifically warned about the consequences we are seeing, and they voted for ObamaCare anyway.

Republicans repeatedly warned about Americans losing their health plans—repeatedly. We repeatedly warned about Americans losing access to doctors and to hospitals. We repeatedly warned about rising costs and skyrocketing premiums. Check the CONGRESSIONAL RECORD. We warned and we warned and we warned about each of these.

Frankly, we shouldn't have had to do that. It doesn't take an actuary to figure this stuff out, and the issues my constituents now have to put up with as a result of this law are just simply unacceptable.

Kimberly Maggard from Nicholasville wrote that the health plan available to her through the ObamaCare exchange—now listen to this—would cost more than her family's house payment and car payment combined. Kimberly Maggard from Nicholasville in my State wrote that the health plan available to her through the ObamaCare exchange would cost more than her family's house payment and car payment combined.

Here is what she said:

We are just average Kentuckians working and living paycheck to paycheck without any assistance from government programs. I really don't know what we will do if they have to pay that amount out for insurance. We might lose our home . . . our transportation . . . my daughter might have to drop out of college . . . the list goes on and on. What are we supposed to do?

Harriet White from Rockville said that ObamaCare is negatively impacting her family's finances and quality of care. Here is what she said:

The sad truth is that like my coworkers, my deductible has doubled along with my premiums. The only way to be able to adjust is for us to either reduce or stop our 401(k) contributions. This is hardly affordable health care.

Here is what Larry Thompson from Lexington said:

[The] health plan that I've had for 10 years just got cancelled, and the least expensive plan on the exchange is the 246 percent increase—that means hundreds of extra dollars per month we don't have.

Look, all of this is completely and totally unacceptable, and so many of ObamaCare's consequences were basically predicted by Republicans years ago—years ago.

So it is no wonder vulnerable Democrats are dashing for the exits, per-

forming political contortions that would make Houdini blush. But here is the issue: Until these folks are willing to face reality, I doubt it will matter.

One of our colleagues on the other side was asked back in 2009 if she would accept "100 percent responsibility" and "100 percent accountability" for the failure or success of any legislation she voted for. She said she would. So she and her colleagues now have a choice. They can keep trying to distance themselves from ObamaCare in public while simultaneously protecting it from meaningful change in private—to keep standing by as this train wreck unloads on the middle class—or they can simply accept that they were wrong to ignore all the warnings, and then work with Republicans to repeal and replace ObamaCare with real bipartisan health care reform. That is the choice.

If Washington Democrats are looking for a political exit, that is the only meaningful one available—the only exit. If they are looking for the best policy outcome to do right by the people who elected them, they will reach the same conclusion. That is the good news.

I hope they will get there soon because we have already seen Washington Democrats travel through just about every one of the stages of grief: Denial at first, claiming the law's only problem is that it was just too popular; then anger, pointing fingers of blame at contractors, Republicans, of course, the media—really anyone but themselves, then bargaining, proposing nips and tucks to a law that needs an overhaul instead.

For the sake of our country, let's hope they just speed right along to acceptance—the acceptance that ObamaCare can't work and won't work, and that their constituents deserve better. When they do, Republicans will be right here, just as we have always been, ready to work with them to start over with real reforms that decrease costs and improve access to care. That is what our constituents wanted all along, and that is just what we should give them.

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#### RESERVATION OF LEADER TIME

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

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#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business for debate only for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half.

Who yields time?

The Senator from Oregon.

#### NOMINATIONS

Mr. MERKLEY. Mr. President, I rise today along with my colleague from New Mexico to protest the paralysis that has kept the Senate from confirming well-qualified nominees to do their jobs.

The U.S. Senate provides the opportunity for all of us to weigh in on our constitutional role of advice and consent, advice and consent regarding nominations to the executive branch and to the judicial branch by the President.

Everyone in this body agrees that the Senate should, under this responsibility, serve as a significant check on the quality of Presidential nominations, the quality of nominations or nominees for the court and for executive positions. I certainly share that sentiment, that the Senate should provide this significant check on quality. The Senate should vet nominees. We should question them. We should debate them. And then we should vote on whether to confirm or reject them.

What is absolutely clear, however, is that when advice and consent becomes block and destroy, then the Senate process is broken. A minority of one branch of government should never be able to systematically undermine the other two branches of government. Yet that is exactly what we have today.

Look at the well-qualified nominees who have been blocked from having an up-or-down vote here in the Senate Chamber just in recent weeks: MEL WATT, nominated to head the Federal Housing Finance Agency; and then nominees to the court: Patricia Millett, Cornelia Pillard, and now Robert Wilkins.

These folks are highly qualified, but they were not allowed to have an up-or-down vote. The Senate was not allowed to weigh in on whether they were to be confirmed or not confirmed. This situation in which the Senate minority undermines the executive and judicial branches is unacceptable. It is inconsistent with the concept of coequal branches of government. Our Constitution laid out this vision that the House and the Senate, as the legislative branch, would serve as a coequal branch with the executive branch and the judicial branch.

Certainly the ability to check nominations, to vet nominations, is part of that check on the other two branches. But when it is used in this manner, this manner in which you can systematically undermine the function of another branch, then you have taken a position and created a process that is inconsistent with coequal branches. Taken to its extreme—and we are seeing that extreme today—the executive branch is compromised in its ability to function, the judicial branch is compromised in its ability to function.

Now we have a special situation that has arisen in which the minority says: We are going to block all nominees to the DC Circuit Court regardless of their qualifications because we want to

see it dominated by the nominees from a former President, and we do not let the existing President put his fair share of nominees into those vacancies.

The argument has been brought forward—to cover up this effort to ideologically pack the court—that this is simply about the work requirements of that circuit not being high enough to justify additional judges. Yet if that was indeed the case and there was an effort to distinguish it from the ideological bent that is clear here, then that would be something one would say about the future: Let's implement that 8 years down the road or we would have seen it in the past when President Bush was putting his nominees forward. The Republicans would have said: No, we do not want to confirm these nominees because the workload is not heavy enough. But just a few years ago, the argument was very much: Let's confirm these nominees of President Bush. Well, the workload, if anything, has increased.

So we cannot allow this process in which a minority says: When our President is in charge we are going to insist on up-or-down votes, but when a President of the other party is in charge, we are not going to allow those votes.

Let's be clear: There should not be an "our President" and "their President." The President is the President of the entire country, of the blue States and the red States, altogether. The judicial system serves all of us regardless of our party identities. It is our responsibility to make it work.

In January we had a promise made on the floor of this Chamber, and that promise from Minority Leader MITCH MCCONNELL was to restore the "norms and traditions of the Senate" regarding nominations.

What are the norms and traditions of the U.S. Senate regarding nominations? It is an up-or-down vote, with rare exception. But, unfortunately, as we stand here today, we see that January promise has been broken. It was broken a few weeks into this year when a filibuster for the first time in U.S. history was launched on a Defense Secretary nominee. We then saw it in July—another effort of this Chamber to come together and return to the norms and traditions of the Senate. And briefly we did have up-or-down votes on executive branch nominees. But that ended a couple weeks ago when MEL WATT was blocked from that opportunity. So, therefore, the Senate must act. The Senate must act to restore its traditional role of having an up-or-down vote.

I, quite frankly, would prefer, in a perfect world, to see this done simply through the type of agreement we have sought a couple of times: up-or-down votes, with rare exception. But it is clear that is not possible because the January promise was broken, because the July promise was broken, and, therefore, we are in the position where we have to do by rule that which cannot be done by simple cooperation.

Some have said this has never been done, changing the rules or the application of the rules by a simple majority in the middle of a term. But that is simply not the case. I have in my hand a list of 18 times when this has been done since 1977. I have put up a chart in the Chamber of some of those changes that are quite relevant to this discussion.

By a simple majority in 1977: preventing postcloture filibusters; in 1979, by a simple majority: preventing abuse of legislative amendments in appropriations bills; in 1980, preventing filibusters on the motion to proceed to nominations and treaties; in 1987, preventing filibusters via rollcall of the Journal.

I have put these up for those instances that pertain to filibusters. But these are only 4 of the 18 times since 1977 that we have changed the application of the rules by a simple majority. So let no one say this is unprecedented. And these 18 changes have come more often in Republican hands than the hands of Democrats in terms of the majority of this body.

It is time to end the block-and-destroy strategy being employed by the minority in regard to executive branch nominations and judicial nominations.

I am very honored to be a partner in this conversation with the senior Senator from New Mexico, who has been raising concerns about the functionality of the Senate from the day he first set foot in this Chamber.

With that, I yield for my colleague.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that Senator MERKLEY and I be allowed to engage in a colloquy following my remarks.

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

Mr. UDALL of New Mexico. Mr. President, I could not agree more with what Senator MERKLEY pointed out. There has been a lot of discussion—especially as shown on that chart the Senator talked about—that we have done this before. When the Senate hits a roadblock, we can come back to our majority powers and get through the roadblock and continue to do business, to do business as the Senate and do the business we were sent here to do.

As the Senator noted, I remember I called for rules reform 4 years ago. I said the Senate was a graveyard for good ideas. I remember talking about that in my campaign and coming here, and I am sorry to say little has changed, that the digging continues.

Americans are tired, I believe, with the gridlock and the dysfunction in Washington—filibusters, shutdowns, hyperpartisan attacks. Americans want reform in the way their government operates: more cooperation, more transparency, less partisanship, more problem solving.

Monday's vote was one more example of why we need reform. Judge Robert

Wilkins is well qualified to serve on the Court of Appeals for the DC Circuit. He deserved an up-or-down vote. Instead, what did we get? Another filibuster. He is the fourth nominee to that court to be trampled on by the minority—not because he is unqualified, not because of any failing on his part, but because a Democratic President nominated him. For some that is enough, that is all it takes to tell an eminent American to go home.

First it was Caitlin Halligan in March, then Patricia Millett last month, followed by Nina Pillard last week, and now Robert Wilkins—each of them exceptional, every one of them distinguished nominees. Each would be a credit to the court of appeals.

So No. 4, and counting. In baseball, three strikes and you are out. Not so in the Senate.

But this is not just about the rules. It is about having a Senate that works—not one that buckles under the weight of filibusters.

The partisan games continue, and the game has gone on long enough because the losers are the American people.

Senators MERKLEY and HARKIN and I proposed changes to the rules at the beginning of this Congress—rules changes that were fair. They reined in the abuse. They protected the minority. We were very clear. We called for a talking filibuster. We argued that if the minority wants to continue debate, which is what voting against cloture is, they should actually have to stand on the floor and debate. Come down here, if you want to slow things down, and get on the floor and debate.

Instead, a compromise was reached. The two leaders agreed to "work together to schedule votes on nominees in a timely manner by unanimous consent, except in extraordinary circumstances." That was the standard and the test: "extraordinary circumstances."

The minority leader said:

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

That was the agreement, and we all know it has not been kept.

In July, we had another shutdown on confirmations—all qualified candidates, all prepared to serve, but nominated by a Democratic President—or asked to lead agencies the other side does not like: the Department of Labor, the EPA, the Consumer Financial Protection Bureau—all blocked.

Once again we looked at changing the rules with a simple majority to restore the Senate's ability to function. We had a historic meeting in the Old Senate Chamber, and we reached another compromise.

I was hopeful for the outcome. There was feeling on both sides that things had to change, that we needed to change the way we do business here, and we confirmed several of those nominees.

But here we are again back on the filibuster merry-go-round and getting nowhere. Four months later, the same debate, the same partisan games, with qualified nominees denied an up-or-down vote. And not just judicial nominees but also Congressman MEL WATT blocked from leading the Federal Housing Finance Agency.

The only “extraordinary circumstance” has been continual obstruction.

These are not the norms and traditions of the Senate. It is the failure of partisan politics. In fact, it was not long ago that Republicans were the first to say so during the Bush administration. They were up in arms. Why? Because 10 judicial nominations had been blocked—10, mind you. That number seems quaint now, but it was enough for the Republicans.

Here is what the Republican policy committee said in 2005. These are their words:

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. Exercising the constitutional option in response to judicial nomination filibusters would restore the Senate to its longstanding norms and practices governing judicial nominations, and guarantee that a minority does not transform the fundamental nature of the Senate's advice and consent responsibility. This approach, therefore, would be both reactive and restorative.

Restoring the Senate to its longstanding norms and practices. It would be difficult to state the case more clearly.

One of my colleagues on the other side of the aisle said: We should be careful what we wish for; that is, majority rule could backfire, which might get more Justice Scalias.

Well, that is exactly the point. The Constitution does not give me the right to block a qualified nominee no matter who is in the White House. The real norms and traditions of the Senate honor that principle. Some of us may disagree with Justice Scalia on judicial philosophy, but he was a qualified nominee. He received an up-or-down vote and he was unanimously confirmed. Likewise, Justice Ruth Bader Ginsburg was considered liberal, the former ACLU general counsel. Many on the other side may have disagreed with her views, but there was no filibuster. She was confirmed by a vote of 96 to 3. A minority in the Senate should not be able to block qualified nominees.

On the other side of the aisle, this is not advice and consent; this is obstruct and delay. The people elect the President. They give him or her the right to select a team to govern and to appoint judges to the Federal bench. If those nominees are qualified, they deserve an up-or-down vote. That is how our democracy is intended to work. That is the mandate of our Constitution. That is the real tradition of the Senate. That is the way it is supposed to work. It has worked that way in the past.

My father was Secretary of the Interior for President Kennedy. He later told me—when I asked him how long it took to get his team in place at Interior, he said, “Tom, I had virtually my entire team in place in the first 2 weeks”—in place and ready to serve the American people in 2 weeks. The President's team is his team to choose so long as they are qualified to do the job.

My colleague on the other side is right. The winds can change. Let's be candid. Neither side is 100 percent pure. Both sides have had their moments of obstruction and, no doubt, their reasons at the time. But I do not think the American people care much about that. They do not want a history lesson or a lesson in parliamentary procedure. They want a government that is fair. They want a government that is reasonable and that works for them.

I say to Senator MERKLEY, we are back in this situation now where we started as we came in the Senate in 2008 and saw a broken Senate, a Senate that was not responding to the American people.

What I wanted to ask the Senator about, because to me it is one of the troublesome parts of what is happening with these judges, the last four judges who have been filibustered have been women. I think we are talking about a different standard because in between the four, a man got onto the same court, was voted in, but three women have been held up and filibustered: Caitlin Halligan, Patricia Millett, Nina Pillard. So over and over we have this kind of obstruction. Does the Senator think we have a double standard? Is it one standard when we look at what has happened recently on the court of appeals where a man gets on and three women get denied?

Mr. MERKLEY. I say to my colleague from New Mexico, I would say that it has been very disturbing to see these very capable women whom you have mentioned not be able to get an up-or-down vote. Indeed, our chair of the Judiciary Committee Senator LEAHY held a press conference to make this very concern known, that it seemed as if there is one process for men and a different process for women. I am going to defer to his judgment on that because I have not been part of the Judiciary Committee. I would like to think that in this day and age there is not that sort of gender bias. That is what I would like to think, but I will let Senator LEAHY's commentary and his concerns in that area speak for themselves. It is clear, though, that fundamentally the situation is this: These women were highly qualified. They did not get up-or-down votes.

I have in my hand a memo from April 25, 2005. It is titled “The Senate's Power to Make Procedural Rules by Majority Vote.” It consists of arguments made by the Republican majority in 2005 that nominees should get up-or-down votes for the judiciary. There are many quotes from colleagues

who still serve in this body who said in 2005 that regardless of whether they were in the majority or the minority, they felt nominees deserved an up-or-down vote, that the Constitution demanded it, and that the balance of powers between the branches demanded it.

I would ask my colleague if he would help us understand what has changed since 2005 when our colleagues across the aisle made the case that nominees deserved up-or-down votes, said it was essential in the constitutional vision, was essential in the proper application of advice and consent. What has changed that makes those arguments disappear now in 2013, 8 years later?

Mr. UDALL of New Mexico. I think we have come back to the central question. That question is, How does our Constitution work when it comes to nominees? I do not have any doubt that we are talking about majorities. There are only five places in the Constitution where a supermajority is mentioned. It is not mentioned when it deals with advice and consent, judicial nominees, or Presidential nominees to the executive branch.

I think the Republican policy committee said it very well in the memo the Senator is talking about. It was authored at the time when the head of the policy committee was John Kyl. He was the chairman of the policy committee, known in the Senate as a good lawyer, and was respected on the Constitution. He wrote about the Constitution and how the Constitution should work. He said a couple of things that I think are interesting. This was back on April 25, 2005:

The filibustering Senators are trying to create a new Senate precedent—a 60-vote requirement for the confirmation of judges—contrary to the simple-majority standard presumed in the Constitution.

A little bit further on, he also said:

An exercise of the constitutional option—

That means taking an action to put a judge on the court with a majority vote—

The exercise of the constitutional option under the current circumstance would be an act of restoration—a return to the historic and constitutional confirmation standard of simple-majority support for all judicial nominations.

So I do not think anything has changed. I do not think it has changed from the time in 2005 to today. I do not think the Constitution has changed from the time we put it into place until today, that when it comes to those nominees the traditions and norms of the Senate are to have the majority have a say, that they get an up-or-down vote.

That is the situation right now. We have a filibuster going on on a number of nominees, both Presidential nominees and judicial nominees. So I think what we are trying to do in working with our leadership is say: Let's go back to the norms and traditions of the Senate where we use the majority wisely and give that advice and consent.

Mr. MERKLEY. I thank the Senator for expanding on that picture of the core elements necessary to exercise our constitutional responsibilities. I keep thinking about how polarization in our society has come to bear on this issue. I believe there are many colleagues across the aisle who believe very much in what they said in 2005, that there should be up-or-down votes; therefore, I have to conclude that they have decided their base demands a permanent campaign against the President and the maximum use of every tool available and that is trumping the appropriate exercise of advice and consent.

Perhaps that polarization explains why the promise made by the minority leader in January to return to the norms and traditions of the Senate fell apart within weeks, if not days. Perhaps it explains how the understanding that was reached in July to allow up-or-down votes on executive nominations fell apart a couple of weeks ago. In that situation we have a single path left to us to appropriately exercise advice and consent; that is, to change the rules so they cannot be abused. If the abuse cannot be cured through good-hearted dialog and understanding of our need to honor the constitutional vision, then we need to change the rules. That is why I wholeheartedly support moving toward a simple up-or-down vote.

In 2005 our Republican colleagues said: If the Democrats keep blocking up-or-down votes, we are going to change the rules and require a simple majority. The Gang of 14 came out with a compromise, and they said—the compromise was that Democrats would only filibuster under extraordinary circumstances and Republican colleagues would then not change the rules. But actually that worked fine in that the Democrats honored that until President Obama came into office. But that extraordinary circumstance has not continued to be honored after President Obama came into office. In that situation, it does seem as if the only way to make sure we honor the constitutional vision and the balance between the powers is to actually change the rules and say it is an up-or-down vote.

I would ask my colleague from New Mexico whether he shares that perspective or perhaps has a different take on it.

Mr. UDALL of New Mexico. I do not think there is any doubt in this country that on both sides—the Republican side and the Democratic side—the base pushes us hard. I think we have reached this stage of hyperpartisanship. I believe our job as leaders is to overcome that and to lead. Leading here means allowing the norms and traditions of the Senate to continue, and that would be an up-or-down vote on judicial nominees.

What I asked the Senator about what was particularly troublesome to me was when we look at the history, the last two women who were put onto the

Supreme Court—Sonia Sotomayor and Elena Kagan—75 percent of the Republicans in the Senate voted against both of them. So we have that history compared with the women who have been denied here. It is very troubling to me to see that.

I think we are supposed to wrap up. I do not know whether the Senator has any closing comments.

Mr. MERKLEY. I thank my colleague from New Mexico for his leadership in trying to restore the Senate so that it will work—work on legislation, work on executive nominations, work on judicial nominations. The country has a low opinion of the function of our Chamber. We certainly do not deserve a high opinion when we are captured by this level of partisan paralysis. I look forward to continuing to work together to help restore this body to a great deliberative body that fulfills its responsibilities under our Constitution.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

#### OBAMACARE

Mr. JOHANNIS. I come to the floor to discuss reports I have heard from my fellow Nebraskans about the President's health care law.

Senators have been quoting facts, figures, and reports about the negative effects of this law, and that dates back to when the debate began in 2009. The reality is that no amount of facts or figures can illustrate the real-life stories from our hometowns and from the Main Streets of Nebraska. These personal stories are compelling and powerful examples of what the reports have been saying all along, why we must stand with the American people, and repeal ObamaCare.

A woman named Deb from Kearney, NE, reached out to me. As millions of other Americans, her family's insurance plan has been cancelled, notwithstanding the President's promise that if you like your plan, you can keep it, period.

Now she is facing new premiums for her family. They have increased an unbelievable 133 percent. Their plan pays for maternity coverage, even though they no longer need maternity coverage. Why? Because ObamaCare mandates this, they have no choice about it.

Deb said:

Obama needs to call it like it is. This is not the affordable health care act.

Jennifer, from Madison, NE, reached out to me with a very compelling story. Jennifer is a two-time cancer survivor. She shared that last year she spent a fair amount of time evaluating health care plans, doing her homework. She picked a plan that made a lot of sense for her family under her circumstances. Recently, Jennifer learned that her current plan would no longer be available because of the health care law's new requirements. She described her new plan and said:

My deductible is going up, my co-insurance is going up, and my premium is almost doubling. . . . I think it is an insult to hard working, responsible people like myself to require me to pay for coverage of all these additional services.

A woman named Hannah from Lincoln, NE, 25 years old, is seeing massive increases as well. Her monthly premium is increasing by about 160 percent, and her annual deductible is more than doubling to over \$6,000. She explains:

I'm healthy and active—I love long-distance running—and I rarely get sick. This is impossible for my budget. I feel like Obama is punishing those of us who have graduated college and are working hard trying to make a life for ourselves. We're starting our families, building businesses, launching our careers, and trying to give back to our communities however we can. Now ObamaCare is devastating the American dream of an entire generation.

These Nebraskans and people all over this great country are understandably frustrated. There has been a lot of talk recently about this law. There has been a lot of talk about the President's promises. Over the course of the last 4 years, none of his promises have centered on American families such as these who are losing the plans they like or who are paying more for their coverage. None of its promises indicated that young people's costs, such as Hannah's, would go through the roof.

One wonders if there had been honesty in this debate whether the bill would ever have passed. In fact, President Obama's promises signal just the opposite. He said over and over that people could keep their plans if they liked them. He even put a "period" there, and he said they would pay less.

These consequences are not happening by accident. They are the central pillars of the President's law, ObamaCare. The law mandated coverage standards for health insurance plans and forced people into policies that meet those mandates.

What is the result? The result is a law that drives up costs. It eliminates choices. It is motivated by a simple guiding principle; that is, that Nebraskans and Americans can't decide for themselves. It is motivated by a principle that government knows best. It is saying that the health insurance people freely chose is an inferior plan because the President and his people say so. It says that government must protect people from their own decision-making.

That is not what the American people want and is not the kind of country they want to live in. They have spoken loudly and clearly, especially when the truth came out as the realities of ObamaCare are settling into their daily lives.

The frustrating part is that the President's announcement last week that Americans can supposedly keep their plans was provoked not by devastating stories of millions of Americans or Nebraskans but by members of