

have the money to fill a slot we don't need.

It is heartbreaking to see that we have crossed this rubicon and changed these rules when the President—as a matter of actual ability to perform the job—has only had 2 judges fail to be confirmed out of over 200.

This is breathtaking to me. There is a growing concern on our side of the aisle that Senator REID, the majority leader, is very unwilling to accept the process. He is unwilling to accept the fact that he can't win every battle, and he changed the rules so he could win.

I feel this is a dark day for the Senate. I don't know how we can get out of it. It is the biggest rules change—certainly since I have been in the Senate, maybe my lifetime, and maybe in the history of the Senate—where it has changed by a simple majority by overruling the Chair.

The Parliamentarian advises the Presiding Officer of the Senate, when Senator REID asked that these judges be confirmed by a majority vote, the Parliamentarian advises the Chair and the Chair ruled we can't confirm them on a majority vote. We can't shut off debate without a supermajority vote. The Chair ruled.

Senator REID says: I appeal the ruling of the Chair. I ask my colleagues in the Senate to overrule the rules of the Senate, by a simple majority vote, to overrule the Parliamentarian and the Presiding Officer of the Senate.

This is what happened. When our rules say to change the rules of the Senate, it takes a two-thirds vote.

This is a dangerous path which I hope my colleagues understand. Many things that are bad have been happening in the Senate. I will speak more about things that should not have happened and are eroding the ability of this Senate and the way it should function, that are eroding the ability of individual Senators from either party to have their voices heard.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. I am a new Member of the Senate, serving in my first term. I was a Member of the House of Representatives before coming to the Senate, and I had great anticipation and expectation of the opportunity that service in this body presented to me.

The Presiding Officer of the Senate today has had similar experiences. We served in the House of Representatives together. The ability for an individual Senator, particularly a new Senator, and perhaps even more so, someone from a smaller, rural State, our ability to influence the outcome to receive attention and to have the administration's nominees come to pay a call on us to become acquainted is diminished.

In my view, today is the day that reduces the ability for all Senators to have influence in the outcome of the decisions of this body and therefore the outcome of the future of our country.

I don't understand why this happened today. The empirical evidence doesn't

suggest that Republicans have been abusive, that the minority party has failed in its obligation to be responsible.

We heard the words the Senator from Arizona Mr. MCCAIN spoke about others—President Obama, the majority leader of the Senate, the former Senator from West Virginia Mr. Byrd—about their views on this issue. Yet the outcome today was something different, different from what they said only a short time ago.

It is hard to know why we did what we did today, but I know our ability as Senators of the United States to represent the people who hired us to represent them has been diminished.

I am reluctant to attribute motives as to why this occurred. In the absence of evidence that would suggest there is a justifiable reason, a justified reason for doing so, I am fearful that what is reported in the press and elsewhere is the reason the rules were changed, which makes today even more sad to me because the explanation for why the rules were changed was a political effort to change the topic of conversation in Washington, DC, and across the country.

The story is that the White House pressured the Senate to change its rules, not because the rules needed to be changed, there was abuse or because people actually believed this was a good rules change for the benefit of the Senate and the country but because the Affordable Care Act, ObamaCare, is front and center in the national media and on the minds of the American people. As ObamaCare is being implemented, people are discovering the serious problems it presents them and their families. Therefore, politically, we need to change the dialog, change the topic. For us to use a political reason to do so much damage to the institution of the United States is such a travesty.

#### HEALTH CARE

I wish to mention the Affordable Care Act and talk for a moment about that.

I am headed home and on Monday I will conduct my 1,000th townhall meeting. From the time I was in the House of Representatives, I held a townhall meeting in every county. In the Senate, I have conducted a townhall meeting in all 105 counties since my election to the Senate. I am beginning again and it happens that Monday will be my 1,000th.

I have no doubt the serious conversations we have will not be about the rules or the institution of the Senate or what happened with something called cloture filibuster, the real problem people face is what ObamaCare is doing to them and their families. I have this sense there is an effort or perhaps belief—at least an effort—to convince people this is only a problem with a Web site. The Web site has certainly received a lot of attention over the past few weeks. Perhaps, unfortunately, the Web site is not the real problem.

The real problems we have with the Affordable Care Act passed by a Congress on a straight party-line vote in the Senate, similar to what we saw today, and the consequences of ObamaCare are real and cannot be fixed by fixing the Web site. I wish those problems were only a simple matter of a technician adjusting the program that has been created for enrollment, but it is not the case.

The mess of ObamaCare runs so much deeper. One of the consequences I know I will hear about on Monday and hitting individuals and families across the country right now is their cancelled insurance companies.

President Obama spoke about this in the description of what the Affordable Care Act would mean to Americans: If you like your policy, you can keep it. If you like your physician, you can retain him or her.

The fact that millions of Americans are now losing their health care coverage is not an unintended consequence. I doubt if it is anything that can be fixed with anything that President Obama said in his press conference a few days ago. The reality is this cannot be described as something we didn't know about.

In fact, on the Senate floor in 2010, again, a straight party-line vote occurred, as we saw today, in which the opportunity to do away with the provisions of the grandfather clause—again, Republicans unanimously supporting an Enzi amendment to change it so this wouldn't occur and a straight party-line vote, with Democrats voting the other way. It wasn't as if this was something that wasn't considered or thought about. It wasn't as if we only woke up 2 weeks ago and we saw policies were being canceled and thought: Oh, my gosh. That is not what the Affordable Care Act is about.

The reality is it was expected, it was built in, and it is a consequence of the Affordable Care Act.

In order for ObamaCare to work and the exchanges to function, the Federal Government has to have the power to describe what policies will be available to the American people. ObamaCare takes the freedom to make health care decisions for an individual and their families and rests that authority with the Federal Government.

Despite the headaches, frustrations, and anger Americans and Kansans are experiencing now, I don't see there is a real opportunity for us to solve that problem, because undoing what is transpiring with the policies would undermine the foundation of ObamaCare. I consider my task as a Senator from Kansas, in part, is to help people. People tell me in person, email, and by phone call about the consequences.

The stories are a wide range of challenges. I talked about this on the Senate floor last week. An example is one conversation with a constituent who said: My wife has breast cancer. Our policy has been canceled. We have nothing to replace it with. Help me.

These are things I can't imagine anyone in the Senate wouldn't want to try to help them. I don't know how we do that with the basis of ObamaCare that designs the policies and removes the individual person from making the decisions about what is in their best interests and for their families.

Calling for repeal and replacement of ObamaCare is not an assertion on my part that everything is fine with our health care system. There are problems with our health care delivery system, and they do need addressing.

Long before President Obama was President of the United States, my service in Congress, much of the effort was trying to find ways to make certain health care was available and affordable to places across my State, whether one lived in a community of 2,000 or 20,000 or 2 million—we don't have many communities with 2 million—200,000; people ought to have access to health care. In my view, it is an important task for all of us.

While some hoped ObamaCare would be the solution, it turns out to be the problem. We can replace ObamaCare with practical reforms that promote the promise that the President made, that empower individuals, and give people the options they want. We need to do that. In order to do that we need to set ObamaCare aside and pursue what I would call commonsense, step-by-step initiatives to improve the quality of health care and slow the increase or reduce the cost of health care.

In my view, we cannot not address preexisting conditions. We need protections for people, individual coverage, without a massive expansion of the Federal Government.

We need to make certain millions of individuals retain their current health insurance policies that they know about and they like. We need to make certain we continue that health care coverage by enabling Americans to shop for coverage from coast-to-coast regardless of what State they live in. Competition will help reduce premiums. Increased competition in the insurance market is something that is of great value.

It will extend tax incentives for people to purchase health care coverage, regardless of where they live. To assist low-income Americans, we can offer tax credits for them to obtain private insurance of their choice and to strengthen access to health care in our community health care centers. We need to make certain our community health care centers are supported so people who have no insurance or no ability to pay have access to the health care delivery system.

Instead of limiting the plans Americans can purchase and carry, we need to give small businesses and other organizations the ability to combine their efforts and get a lower price because of quantity buying. We need to encourage Health Savings Accounts so people are more responsible for their own health.

When it comes time to purchase health care coverage or access to health care, we are focused on what it would cost and we don't overutilize the system. People need to be empowered to have ownership of their health care plans and their health.

We spend billions of dollars on health care entitlements. We need to boost our Nation's support for the National Institutes of Health by investing in medical research. We can reduce the cost of health care for all, save lives, and improve the quality of life.

Our medical workforce needs to be enhanced. We need more doctors, nurses, and other health care providers. They need to be encouraged to serve across the country in urban areas of our country where it is difficult to attract and retain a physician and in rural and small towns where that is a challenge as well.

Finally, we need to reform our medical liability system and reduce frivolous lawsuits that inflate premiums and cause physicians and others to practice defensive medicine.

Those are examples of what we can do and we can do incrementally, and they seem, at least in my view, to be common sense. If we don't get it quite right, we have the ability to take a step back and make an alteration and improve it over time, as compared to the consequences—the massive consequences—of this multithousand-page bill that, as we were told, we had to pass so that we would know what was in it.

The fatal flaw of the Affordable Care Act is not its Web site but, rather, the underlying premise that the government can and should determine what is best for Americans regardless of what they want. We must not accept a health care system built upon such a faulty foundation.

ObamaCare stands in stark contrast to the values of individual liberty and freedom that have guided our country since its inception. Americans should be in control of their own health care, and I will continue to fight policies that violate those values and advocate for policies that guard them, but also work to make sure that all Americans have better access to more affordable health care.

If you like your health care policy, you should be able to keep it, and if you like your physician, you should be able to retain him or her providing health care for you. Our task is difficult, but it is one that is well worth the battle. We can preserve individual liberty and pursue goals in our country that benefit all Americans.

I thank the Presiding Officer for the time on the floor this afternoon. I yield the floor, and 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. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SESSIONS. Mr. President, to follow up on some of the comments I made earlier about the DC Circuit, there have been accusations—and I guess everybody has their perspective—that seem to suggest that Republicans, for ideological reasons, won't fill these judgeships slots.

I have voted for probably 90 percent of President Obama's judges—well over 80, I know—and the Senate has had confirmed over 200 of President Obama's nominees. I earlier said 250—I think maybe it is over 200. Only two have been denied confirmation.

So these three judges have been appointed to a circuit where the caseload has been falling, and it already, by far—by far—has the lowest caseload in the country based on the eight judges now active in that circuit. So adding three more judges would bring that caseload down substantially further and create an even more underemployed court, which we don't need to do, especially when we have courts around the country that do need more judges. We need more district judges than circuit judges, but there are some circuit judge slots that need to be filled. So I say that out of respect to my colleagues. But it was a cause for concern that the President and other supporters of his judicial vision have openly stated their goal for filling these slots is to advance their agenda.

President Obama says:

We are remaking the courts.

Senator SCHUMER:

Our strategy will be to nominate four more people for each of those vacancies. We will fill up the DC Circuit one way or the other.

One way or the other. In other words, no limit to what we will do to fill these slots that are not needed.

Senator HARRY REID:

Switch the majority. People don't focus much on the DC Circuit. It is, some say, even more important than the Supreme Court.

I have heard conservatives make somewhat that statement, but that is totally wrong: It is not that important a circuit.

It is an important circuit. Occasionally, key administrative rulings get filed in the DC Circuit, and they never get appealed to the Supreme Court. Their decision may be final on some administrative powers, but it is not equivalent to the Supreme Court—nowhere close. You can see that based on how few cases they actually handle.

Senator REID goes on to say:

There are three vacancies. We need at least one more, and that will switch the majority.

Apparently, he is saying there is a division within the circuit and a one-vote majority for a more restrained view of the administrative rulings the court deals with sometimes and a group that is more activist, and he wants to switch that majority. A bunch of others have said the same thing. They have said it.

Doug Kendall, a liberal activist has said:

With legislative priorities gridlocked in Congress—

Now, get this—

—they want the court to advance their political agenda that cannot be passed in the Congress.

Let me repeat that. The liberal activist goal is to advance an agenda that cannot be passed by the Congress—the duly elected representatives.

I remember Hodding Carter, who served President Jimmy Carter, went on one of the morning Sunday talk shows—Meet the Press or something. He was one of the regular guest hosts, and he said one time: We Democrats and liberals have got to just admit it. We want the courts to do for us that which we cannot win at the ballot box.

Judges shouldn't be doing that. But that is what Mr. Kendall says. He says:

With legislative gridlock in Congress, the President's best hope for advancing his agenda is through executive action.

That runs through the DC Circuit.

Nan Aaron, long active in advocating for activist Federal judges, said this:

This court is critically important. The majority has made decisions that frustrated the President's agenda.

So the President is being pressured by a lot of these special interests, and there are others who are advocating these kind of actions. But the court is a court that is well constituted to do its duty, and it will continue to do so and needs no more judges. We don't have the money to fill them. We don't have the money to spend on it just to allow the President to pack the court with some of his nominees that will more likely advance an agenda. At least the agenda that he and his activist friends seem to favor that.

When I came to the Senate, Senators on both sides of the aisle got to offer amendments. I remember Senator Specter, who was then a Republican—an independent Republican and a great Senator. He loved the Senate. He switched parties and became a Democrat. We were right down there on the floor. He was managing a health bill, and I had something I wanted him to accept as part of the manager's package, and he didn't want to do it. So I asked him again and he didn't want to do it, and I asked him again and he didn't want to do it. I wanted him to agree because I didn't want to offer the amendment and have Senator Specter oppose it because I figured I would lose the vote. So I asked him again, and he finally got irritated with me bugging him and he said: You are a United States Senator. If you want to offer your amendment, offer your amendment.

That is the way it was when I came to the Senate.

If you didn't like something, you could offer your amendment. But the managers of the bill had a lot of respect from the colleagues, and if the managers urged people not to vote for it, you were likely not going to win, but at least you could get a vote.

If you promised your constituents back home that you believed in some-

thing and you were going to fight for it, you could at least get a vote, even if you lost. You could tell people you did that. And then you could hold people accountable for voting against what some might like and others would oppose, and people would know where Senators stand.

We have had a significant, dramatic reduction in the number of votes. I think it started in maybe the late 1990s. I know Senator Frist filled the tree a number of times, but not many, over his time here. But Senator REID has just exploded this process.

A perfect example is this Defense bill. It was on the floor all week. We have normally had at least 25 or 30 votes on the Defense bill. We spend \$500 billion in that authorization. There is a lot of concern and interest about defense money is spent and policies over sexual assault or other issues relative to the military, and those are important issues that people have concerns about and are willing to vote on. Why shouldn't they be able to get a vote? Really, why shouldn't they be able to get a vote?

Some of the new colleagues who got elected in 2012 particularly wanted to change the rules of the Senate and demanded that we do better. I raised the question of what the majority leader had been doing. Let's take this Defense bill I mentioned. What did he do? He gets the right of first recognition in the Senate, and there are only a certain number of amendments that can be put on the amendment tree. He fills all those slots—we call it filling the tree—and then no one else can get an amendment pending that the majority leader doesn't approve. It is really unbelievable. And like frogs in warming water, we don't even realize the pan we are in has about got us cooked. We have Members on our side who have missed what is happening to us. I guess half of our Members even on the Republican side were not here when all this started. All they have known is this process.

So Senator REID fills the tree. He says he approved two sexual assault amendments for the military. That is all we have had all week, and he immediately files cloture. He immediately files to shut off debate. When he does that, he then says we are filibustering. He is saying that is a filibuster and he is going to file cloture, demand that we grant cloture and move the bill without any amendments.

This is unacceptable. So Republicans say: We are not going to end debate on the bill until we have a legitimate opportunity to file amendments to the Defense authorization bill and actually vote on some of the key issues facing America's national security and our men and women in uniform. We want a robust ability.

No.

Well, submit a few amendments. Well, that is too many. We are not going to vote on that one. I don't like that one. I don't like that one. No, you

can't get a vote on that one. Our Members don't want to vote on that. You can only have a constricted number.

So we have this spectacle of Senators from great States all over America, hat in hand, bowing before the majority leader, pleading that he allow them to have their amendment up for a vote. It is not right. It is an alteration of the whole concept of the free and open debate the Senate is all about. I truly believe it is, and we are going to have to stop it.

I blame myself. I have complained about this probably as much or maybe more than anyone on our side, but I haven't taken the action maybe that we need to take to begin to confront this issue.

When my new young colleagues and I were discussing this, one of them said: Why, we even have to ask Senator MCCONNELL and get his permission to offer our amendment.

How could this happen? How could a Senator from one of the great States of America be in a position—a Democratic Senator. He has a majority in the Senate. How could he be in a position to have to seek Senator MCCONNELL's approval to call up an amendment?

Here is the answer. Senator REID tells Senator MCCONNELL: I am not going to have all of these amendments. We are only going to have five amendments, and you can't have this one, this one, and this one.

What are your amendments, Senator MCCONNELL says to Senator REID.

He says: Well, these are the amendments we want to offer.

Senator MCCONNELL says: Well, you have restricted my amendments. I don't want to vote on those two amendments of your five. You are going to have to pull those down.

So, in a sense, that young Senator was telling me the truth. I suspect Senator REID goes back and says: Senator So-and-So, Senator MCCONNELL is objecting to your amendment. We can't call it up.

Well, why can't you call it up? I mean, the very idea that a Senator from New York has to ask a Senator from Kentucky whether he can have an amendment is contrary to the approach of the Senate.

So filling the tree is altering the whole process. Again and again, Senator REID takes the floor, he fills the tree, limits amendments, and files cloture immediately. And those of us who say: No, we are not going to agree to shut off debate through cloture because you haven't allowed us to have a legitimate chance to offer amendments—we vote against cloture, and he says: You are filibustering the bill. And he adds these up, and he says that Republicans to an unprecedented degree are filibustering, when all it is, is a reaction to his railroading tactics that have never been used to this degree in the history of the Senate.

Senator MCCAIN was quite correct in pointing out the switching of positions

that Senator REID now takes. While he was opposing this kind of tactic before and supporting filibusters, he has now taken the exact opposite.

With regard to our judicial issues, the Democrats went to a retreat in 2000 and decided to change the ground rules. I believe Senator REID was involved, and Senator SCHUMER was one of the organizers, according to the New York Times. He said: We are going to change the ground rules. And they started immediately and held the first 10 Federal judge nominees to the courts of appeals of President Bush and filibustered. We had never seen anything like that.

Now, according to this document I have, Senator SCHUMER says: We are going to confirm these judges one way or the other, and if you use the right to filibuster—which I pioneered and Senator REID pioneered—if you use that right, now that we have the majority, we are going to change the rules with a simple majority, and we are not going to allow these judges to be blocked even though we have no need for one of them. We are going to ram it through, and we are going to make the taxpayers pay for it, \$1 million a year, one way or the other.

So that is where we are, and I don't believe it is good.

I am not opposed to modernists. I believe we need to be consistent in our principles. We need to defend the history of the Senate. And I don't believe you can change it one year and change it back the next and act as if nothing significant happened. I believe there is a truth and I believe there are values that need to be consistently upheld—at least at a minimum—so this Senate can function.

Senator REID has to stop this process. He cannot continue to dominate the Senate the likes of which has never happened before. There is no one-man dictator in this Senate. We need to say no. That is just the way it is. There is no way the majority leader of the Senate of the United States should be dominating this body the way it is happening today and going to the ultimate of changing the rules as was done today. I feel strongly about that. We are going to continue to talk about that.

We have an institution to preserve. Senator Byrd would never have allowed this to happen—as Senator MCCAIN said—the historian of the Senate, who explained this great Senate's history. When I first came here, he lectured to both parties and new Members about what it is all about. The love he had for this institution was strong.

I happened to have the honor earlier today to hear Senator LEVIN talk about this issue. He is leaving this body. He is a great Senator. He is smart. I have been so impressed with how he has handled the Armed Services Committee, on which I am a member and he is chairman. He gets virtually unanimous votes on the defense authorization bill. And the only reason we had no votes on the bill on the floor today in com-

mittee was because they marked the spending level above what the Budget Control Act says. They shouldn't have done that. Under that proposal, we would spend more money than we are allowed to spend under law. But it was done. Otherwise, all the differences were freely discussed. We had multiple amendments. Senator LEVIN is very precise. He allows people to make amendments. He suggests compromise. He allows people time to discuss with staff, come back, amend, agree, disagree, and finally have a vote. It creates good spirit, and it creates a committee such that even legislation as important as this can pass unanimously out of committee. I believe last year the bill was unanimous out of the Armed Services Committee, which is hard to achieve in any legislative body.

This is a dark day. I am disappointed at where we are. This is a matter that can't just be forgotten. It won't be forgotten. We don't need to act precipitously, but we need to make clear that for the Senate to work, individual Senators of both parties have to be free to offer amendments—that clearly needs to be so—and certain rights the minority party might have cannot be eroded anytime they become effective to frustrating the majority leader's desire to advance certain pieces of legislation or nominees.

This is not going away. We will keep discussing it. I hope and pray we will be able to reach some sort of solution which puts us back on the right path.

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

The PRESIDING OFFICER (Mr. SCHATZ). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—S. 1774

Mr. SCHUMER. Mr. President, I ask unanimous consent that, as in legislative session, the Senate proceed to the consideration of S. 1774, a bill to reauthorize the Undetectable Firearms Act of 1988 for 1 year, introduced earlier today; that the bill be read three times and passed and the motion to reconsider be laid upon the table with no intervening action.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. Mr. President, reserving the right to object, I say to our colleagues, this is not a good day to move forward with this legislation. We will be glad to give it serious attention. I know it is the kind of thing we probably can clear at some point, but I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from New York.

Mr. SCHUMER. Mr. President, I appreciate the remarks of my friend from Alabama, my gym mate and friend and colleague. I would say this. This is sim-

ply a renewal of a bill that has passed the Senate unanimously several times before. These days, technology has allowed us to make undetectable a firearm—no metal. It can get right through a metal detector.

I would like to improve on this bill but, because it expires by December 9, right before we get back, I was hoping we could simply pass the existing law that is on the books. I am afraid that will not happen.

I understand why my colleague from Alabama objected. I hope as soon as we come back we might get this body to pass it and maybe get the House to pass it.

We are in a dangerous world. To allow terrorists, criminals, those who are mentally infirm, to walk through metal detectors with guns that are made of plastic and then use them at airports, sporting events, and schools is a very bad thing. What makes us need to do this rather quickly is that a few months ago someone in Texas published on a Web site a way to make a plastic gun, buying a 3-D printer for less than \$1,000. There are over 200,000 copies, hits on that Web site. People hit the Web site then, so we have to move quickly here. I hope we can move as soon as we get back.

I do understand the objection of my colleague tonight, given everything that has happened today, but we cannot wait. I hope nobody will object to this bill. I have some worries that some might, but let's hope not. This is serious stuff.

I yield the floor and 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. THUNE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. THUNE. Mr. President, I rise today to speak on the National Defense Authorization Act, an amendment I have filed, Amendment No. 2903, which supports the next generation long-range strike bomber. I hope we do get on the Defense bill.

This amendment, like many of the amendments that have been filed to this bill, is both germane and non-controversial. As has been the past practice with the Defense authorization bill, my amendment should be included in a managers' package that could be passed by unanimous consent. In the past, when the Senate has considered the National Defense Authorization Act, we have had an average of around 11 recorded votes. That is the historical average. This year so far we have had two. For amendments included by voice vote or unanimous consent, anywhere from 80 to 100 amendments tend to be the norm. In other words, that is the number of amendments that we process, not have recorded votes on, but amendments that