Markey	Pryor	Tester
McCaskill	Reed	Udall (CO)
Menendez	Reid	Udall (NM)
Merkley	Rockefeller	Warner
Mikulski	Sanders	Warren
Murkowski	Schatz	Whitehouse
Murphy	Schumer	Wyden
Murray	Shaheen	
Nelson	Stabenow	

NAYS—39

Alexander	Cruz	Moran
Ayotte	Enzi	Paul
Barrasso	Fischer	Portman
Blunt	Flake	Risch
Boozman	Grassley	Roberts
Burr	Heller	Rubio
Chambliss	Hoeven	Scott
Coats	Isakson	Sessions
Coburn	Johanns	Shelby
Cochran	Johnson (WI)	Thune
Corker	Lee	Toomey
Cornyn	McCain	Vitter
Crapo	McConnell	Wicker

NOT VOTING—3

Graham	Inhofe	Kirk

The PRESIDING OFFICER. On this vote the yeas are 58, the nays are 39. The motion is agreed to.

NOMINATION OF DEBORAH LEE JAMES TO BE SECRETARY OF THE AIR FORCE

The PRESIDING OFFICER. The clerk will report the nomination.

The assistant legislative clerk read the nomination of Deborah Lee James, of Virginia, to be Secretary of the Air Force.

The PRESIDING OFFICER. Pursuant to the provisions of S. Res. 15 of the 113th Congress, there will now be up to 8 hours of postcloture consideration of the nomination equally divided in the usual form.

If no one yields time, time will be equally charged.

The Senator from Alabama is recognized.

RULES OF THE SENATE

Mr. SESSIONS. Mr. President, we are definitely proceeding in an unusual manner at this point in time in the history of the U.S. Senate. We are moving under regular order. Nominations are being processed in regular order. Votes are being held. Debate is being shut off by the appropriate procedures. But it is unusual from what we have been doing all year and what we have been doing historically. So I guess the question is, how did we get to this point? What has happened in the Senate that has caused the difficulties we now have?

I believe it is becoming clear to our colleagues that actions that have been taking place in recent days have altered the very nature of the Senate, have eroded the collegiality that makes this body work on a daily basis, the kind of actions in which people unanimously agreed to allow things to happen different from the regular order, that allowed things to be proceeded up and go faster and move forward. It has been done on a regular basis.

But we have had a conflict, an alteration in the rules of the Senate that is so serious that it impacts the very nature of this institution and causing great concern. We have a lot of new Members in the Senate, and they have not seen how the Senate operated just in the—what?—16, 17 years I have been here. I have seen the great change, and it is a concern to me, and it is even different from that more classical operation before I came here.

It is not healthy, it is not good, and it cannot be allowed to just happen without any discussion, without any full understanding of how the majority leader of the Senate has accrued to himself powers never before allowed to be held by the majority leader of the Senate. It has altered the very nature of the debate here and the processes that involve our constitutional responsibility.

So I believe we need to talk about it. I believe we need to understand it, and somehow we need to alter what has happened.

I remember when I came to the Senate. Senator Robert Byrd loved the Senate. Senator Robert Byrd said there are two great Senates: the Roman Senate and the U.S. Senate. He gave all of us new Members a lecture about the great heritage of which we are a part. He wrote a book on the rules of the Senate.

We have had rules for quite a number of years. The standing rule of the Senate is rule XXII. It is a clear, simple directive passed by two-thirds of the Members of the Senate duly chosen and sworn.

This is what rule XXII says. It is not confusing. It is very clear. It was adopted by two-thirds of the Senate.

It says: A motion signed by 16 Senators—that is, to negotiate something, to shut off debate, you have to have 16 Senators to file a motion—a motion signed by 16 Senators to bring to a close the debate upon any measure, motion, or other matter pending before the Senate—any measure, motion, or other matter pending before the Senate, which includes nominations—shall be decided by three-fifths of the Senators duly chosen and sworn, except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting.

Crystal clear. The rules of the Senate are to be decided by two-thirds. To bring to a close debate upon any measure, motion or matter pending before the Senate requires three-fifths, 60 votes out of our 100. That is the rule of the Senate. That has guided us for generations. It has worked well. I am going to talk a little bit about this, and I could go into even greater detail and say that the process has been working very well.

Senators on the Republican side have treated the nominees of President Obama very well, far better than were the nominations of President Bush when he came here in 2000. When I was here in 2000, his nominees were hammered, filibustered for the first time in history, held by some of the same people who now with great outrage attack those who have blocked and filibustered a few of the Obama nominees—just a few.

So it is really almost unbelievable to me that we are at this point of the rules process of the Senate. So how did it happen? Precisely what happened? I think the American people need to know.

Senator REID, apparently irritated that he was not able to have three judges confirmed to the District of Columbia Circuit bench, decided that he was going to change the rules. Senator SCHUMER said he was going to get those nominees confirmed one way or the other.

I am the ranking Republican on the budget committee. This country is spending money it does not have on things it does not need on an absolutely regular basis. We are wasting taxpayers' money. So the actions of the President and the Senate majority that filled three seats on the District of Columbia Court of Appeals were scrutinized.

In my opinion, I believe it is uncontestable that these positions did not need to be filled. They just didn't. They do not have enough work on that court to need these judges. The average caseload per judge on the DC Circuit was 149 per judge—149. Well, what does that mean? Is that a lot or not a lot? It is not a lot. It is the lowest number by far of any circuit in America. The caseload has been steadily declining.

I have been chairman in the Judiciary Committee of the court subcommittee that deals with these issues. Senator GRASSLEY was there before I came. I have been ranking member and am now ranking member on that subcommittee. We have been watching the DC Circuit. The cases continue to decline. So with 8 judges now active on that court, they are down to 149 cases per judge. Well, is that a lot? How about my circuit, the Eleventh Circuit Court of Appeals in Atlanta, GA, covering Florida, Alabama, and Georgia? How many cases do they have per judge? Hold your hat: 740. That is how many my court handles per judge.

They say they do not need more judges. In fact, they prefer not to have the court get so large that there will not be a coherent court and be able to have consistency in the law. That has been their tradition for many years, more than 20 years. They do not want more judges. Actually, we know that the judges on the DC Circuit have said they do not need more judges. We know they took off last summer. They take off long summers, unlike any other court of appeals, from May 16 to September 16. They did not hold court from May 16 to September 16.

The next lowest circuit in America has almost twice as many cases per judge as the DC Circuit. I know that our frugal Presiding Officer, as Governor of Maine, as part of that Yankee frugality for which they are famous, he knew how to manage his money when he was Governor. It costs $1 million a

year, we are told, to maintain a Federal judgeship. That is a lot of money. So we are adding three judges to the DC Court of Appeals who absolutely are not needed—absolutely are not needed.

This Senate refused to confirm them. We voted not to confirm these judges and blocked moving the final vote. They lacked the three-fifths vote to confirm those judges. But Senator SCHUMER said: We are going to get them done one way or the other. We do not worry about principle. We do not worry about law. We do not worry about the heritage of the Senate. We do not worry about whether we need those judges. We are going to put them in anyway.

Well, I did not pay much attention to that. I did not think he was serious about that, I have to tell you. I thought our Democratic colleagues would really understand that we have confirmed almost all of the President's nominees. Only two or three prior to that had failed out of the whole 6 years he has been in office. President Bush lost five on 1 day—good nominees—for no other reason than they had a classical view of restraint on the part of a judge.

We do not need these judges. As a matter of fact, Senator GRASSLEY and I offered and passed legislation that moved one of the DC Circuit judges to the Ninth Circuit Court of Appeals in California, a liberal circuit. But that circuit wanted more judges and appeared to need more judges to handle the caseload.

We moved one. We have legislation to move others to someplace in America where they are needed because we are going to have to fill and add some judgeships around the country because, unlike the DC Circuit, some of the areas in our country are adding cases and are needing judges and are short of judges. So good management simply says that you take them from where you do not need them and you move them to places where you do need them and you serve the interests of the American taxpayer and you protect the money they send us. We have a holy charge to protect every single dollar extracted from every American.

The former Speaker, the Democratic leader in the House, NANCY PELOSI, said: We have cut all we can cut. We cannot find any more waste in our government. There is nothing left to cut.

Well, there are places left to cut. These three judges on the DC Circuit are just one of thousands, tens of thousands of places we could save the money we are spending that we do not need to be spending, that does not help America, does not make us stronger and does not benefit the rule of law.

So how did it happen? What happened that so upset Senator REID? The majority leader is one of 100, puts his britches on one leg at a time. He does not get to dictate to this Senate. He gets to stand right there, and because his Presiding Officer is selected by Senator REID—he is the majority leader—the Presiding Officer will always recognize him first.

It is done when Republicans have the majority. It is done when the Democrats have the majority.

He asked for recognition and received it. This is how he changed the rules of the Senate that require a three-fifths vote to shut off debate. Remember, a change of the rules of the Senate is supposed to take a two-thirds vote, 67 votes.

He said to the Presiding Officer at that point, the President pro tempore of the Senate, Senator PATRICK LEAHY, chairman of the Judiciary Committee, a man who is most experienced in all of these matters—this is what Senator REID said, and it makes the hair on the back of my neck stand up.

I talked to a reporter, an experienced, well-known reporter, the other day. He was talking about it, and he said—he didn't ask for confidentiality. He probably used my name.

He said: I didn't think he was going to do it, and when it started, everybody in the newsroom just stopped and we looked.

Wow. Because this was a big deal. This was a huge event in the history of the Senate. This is what Senator REID said and everybody needs to know how it happened.

He said, ''I raise a point of order that the vote on cloture under rule XXII for all nominations other than for the Supreme Court of the United States is by majority vote.''

The vote on cloture to shut off debate, he moved that under rule XXII. He said ''under rule XXII'' that the vote on cloture to shut off debate for all nominations ''other than for the Supreme Court''—he thought of that, I suppose—''is by majority vote.''

Rule XXII says, '' . . . a motion signed by sixteen Senators, to bring to a close the debate on any measure, motion, other matter pending before the Senate . . . shall be decided . . . by three-fifths of the Senators duly chosen and sworn.''

The majority leader of the Senate, knowing precisely what rule XXII said, stood right there and asked the chairman, the Presiding Officer, to pretend that this is not a rule of the Senate and that only a majority vote is needed. That is what he said.

What did Senator LEAHY say? The transcript shows Senator LEAHY is the President pro tempore of the Senate. He said, ''Under the rules, the point of order is not sustained.''

It is exactly right. Senator REID's petition that it ought to be decided by a majority vote couldn't be sustained because it is absolutely in violation of the rules of the Senate. Senator LEAHY so ruled, as he was advised, I am sure, by the Parliamentarian, also selected by Senator REID.

There is no question about this. There is absolutely no question about it.

But there is this little deal that on a matter where a Parliamentarian rules on matters dealing with the rules of the Senate, somebody can ask and appeal the ruling of the Senate, an appeal of the whole Senate to check to decide whether the Parliamentarian is correct.

They used this corrective measure to allow the will of the Senate to interpret the rules of the Senate, to break the rules of the Senate. That is what they did, lemming like, my Democratic colleagues, surely not understanding what they did, one by one they walked up and voted or voted from their chairs in support of Senator REID.

All but two of the Democratic colleagues voted—over 50, a majority voted—to say that the rules of the Senate don't mean what they say and they will just ignore them.

The net effect was that once that was ruled, then cloture could be shut off, debate could be shut off with a simple majority. That became the rule of the Senate in a way contrary to the rules of the Senate which say ''—except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds. . . . ''

To change that rule of the Senate that says it takes 60 votes to shut off debate through a majority to shut off debate would take two-thirds. They just ignored that.

The reason it is so important is every other rule, tradition, and standard of the Senate is at stake. A very wise Senator, CARL LEVIN of Michigan, a longtime Democrat, chairman of the Armed Services Committee on which I sit, I have watched him work all the years I have been in the Senate and I have been very impressed. He and I don't agree on many of the substantive issues and how we approach spending, taxes, and regulations. He knows how to preside in a committee to give everybody a fair shake. He said we shouldn't do this. He pleaded with his Democratic colleagues not to vote in this fashion.

He said that if you can change a rule in this fashion, if you can alter the rules of the Senate this way, there are no rules. There is no power, no protection for the minority, other than the simple power of the majority vote. There is nothing in this Senate if we follow this precedent that can't be changed by a simple ruling of an appeal of the chair and all those rights that have always protected the minority.

That is a very dangerous thing. It was played with and talked about by the Republicans on one occasion when the entire ground rules of the Senate for confirmation of judges was altered. We found ourselves with a stunning filibuster of 10 of the first 12 nominees President Bush submitted for the court of appeals, but it was never executed. An agreement was reached to alter that.

Indeed, when this tension rose at the beginning of this year, Senator REID agreed that changes in the process gave the majority party and the President

more power to expedite nominees and gave them more power over the minority. He was able to secure that agreement in a way consistent with the heritage of the Senate. He said at that time he was not going to seek to change the rules of the Senate again.

I wish to say this should not be looked at as a little matter. It is a very big matter. I am extraordinarily troubled by it. That is part of what is happening now.

I wish to mention one more thing on a chart I have that talks about the caseload for the DC Circuit. Look at these numbers. This is the Eleventh Circuit, 720 cases per judge, not 740, as I said earlier. Look at these caseloads per judge until you get down to the DC Circuit, 149 per judge.

We didn't need to add three judges. The existing, active judges, not counting the vacancy, just 8 active judges, only have 149 cases per judge. We don't need to add one new judge.

The President was determined to try to shove that through, and that he did, and got us into all of this turmoil when the Senate didn't agree—three-fifths of the Senate not agreeing to move forward to a final vote resulting in the lack of confirmation of those judges. That is where we are.

In the Fifth Circuit in Texas, there are 488 cases per judge; the Ninth Circuit in California, 472 cases per judge. The Second Circuit, handling some of the more complex cases in America, Manhattan in New York, there are 440 cases per judge. We can see the caseload averages around the country.

The average is 384 cases per judge. That is about 2½ times the number of cases that the DC Circuit has per judge. That is why there were objections to the nominees. I said when this happened most of these nominees would probably be confirmed, because if it hadn't been for the low caseload, that there was not a question—I suggested, without going into detail, the nominees were probably qualified and it would be unlikely that they would be filibustered because of lack of qualifications, although I was probably wrong in that for at least one of them. Pillard's nomination represents a judge whose views on the law are so outside the mainstream that I don't believe, having studied that record subsequent to those remarks, she should have been confirmed on the merits.

My basic view, as I stated from the very beginning, is not a question of the merits of the nominees. The question was do we need to spend $3 million a year for these three judges when we have other circuits that need judges and they don't need them there.

I will share with you what President Obama was looking for in his nominee.

Ms. Pillard went to Yale and Harvard. She also spent 6 years with the American Civil Liberties Union and the NAACP Legal Defense and Education Fund. She is a long-time member of the very liberal activist American Constitution Society. They believe in activist judges and advocate for that. In recent years an activist conservative legal movement has—she has been a professor at Georgetown. She has written many controversial articles and has a record exclusively devoted, it seems to me, as a very extreme, progressive, judicial philosopher who says judges do not need to be objective and are empowered to read the meanings of the Constitution to advance an agenda. It seems to be in harmony with President Obama's openly stated views about what he looks for in judges, and that is a judge who is empathetic. He has empathy.

What does that mean, ''empathy''? What it means is he wants a judge not committed to law. That is what it means.

What is empathy? Feelings, ideology, politics—that is what it sounds like to me.

The American heritage of law is based on objective criteria, the rule of law. Judges take an oath to serve under the Constitution of the United States and the laws of America. They are under them. They serve the law. They don't write the law. They don't amend the law. They don't change the law. They don't change the meaning of words in our laws or our Constitution to meet some empathetic feeling they have, some political agenda they have. And the American people are on to it. They know this is happening too much. They do not like it. They want it to stop. They do not want this kind of judge on the bench.

But many of our great law schools, many of our judicial philosophers and writers think this is all great. They think we need this kind of thing. We need to advance the law. That is what they say, and the hero to them is the one who comes up with some gimmick to reinterpret the plain meanings of our Constitution to have it say what they want it to say at a given time—to help decide a lawsuit they would like to see helped to advance an agenda.

It is really part of a post-modern approach to life, to law. Senator REID's nuclear option execution is also a post-modern power thing. It is the result, it is the end, it is the ideology, it is the revolution. Advance the cause. No rules apply.

Some may say: JEFF, you are too hard. You shouldn't say that. That is exactly what it is, I have to say, in my belief. Remember, in 2001, when President Bush got elected, there were virtually no filibusters. A few judges had problems that were held up for a while, but there were no filibusters of judges. The Democrats met in retreat—Laurence Tribe, Marcia Greenberger, Cass Sunstein were there, according to the New York Times, and they came out of the retreat with a decision, and the decision was to alter the ground rules of confirmations. They immediately accepted the two nominees President Bush had submitted that were Democrats. One of them hadn't been confirmed under President Clinton so he renominated them. They took those two and confirmed them. They blocked ten great judges, great nominees, and this went on for over a year.

There was vote after vote after vote, and they steadfastly—Senator SCHUMER, the leader—blocked those judges from being voted on by a filibuster, because there weren't 60 votes to shut off debate to effect cloture. So this went on for an extraordinary time, and at some point the threat was that the nuclear option would be executed. So a group of Senators met and said: Look, let's not change the rules of the Senate by breaking the rules of the Senate. Let's reach an agreement. And this is what they said. They said: You shouldn't filibuster judges any more unless there are extraordinary circumstances to justify it. Normally, you should just vote yes or no for the judge. In most cases yes or no should be the vote, and serious filibusters of nominees should not occur except for extraordinary circumstances.

I thought that was OK. I didn't really think we should filibuster, period. But it seemed to be a reasonable compromise in a political body that would do the right thing for the confirmation process. We have been operating under that since 2002, I guess it was when that agreement was reached. I thought it was pretty good, actually. I was sort of proud of the way that came out. Therefore, President Obama has had very few filibusters.

But when this gang of 14 reached their agreement, and it sort of was adopted by the Senate, there were ten judges being filibustered out of the first batch of judges President Bush had nominated. What came of it was that five were confirmed and five failed. So on one day, five judges were defeated without, in my opinion, anything like a justifiable basis to defeat those judges. But that is the way it was. We agreed to it. Five judges were blocked and never got to serve; five more were confirmed.

And who orchestrated that? It was Senator REID. He complained mightily when anybody would even think about ending the right to filibuster a judge, and Senator SCHUMER was leading the filibusters.

So when the three judges that were nominated for absolutely unneeded seats on the DC circuit were blocked, you would have thought this was the first time in history anybody had ever been blocked from being a judge in this Senate. And they went and changed the rules of the Senate. It is just unbelievable to me that we are at this point.

I truly believe that President Obama's nominees were treated fairly. I believe they have been evaluated fairly, and only a very few have been blocked.

On one day Senator REID filed cloture on 17 nominations. It was totally set up, and do you know what he said? He said it was because we were filibustering these. Every time he filed cloture he said a filibuster was occurring.

None of these judges were blocked. All of these judges got confirmed. There was not even a vote on cloture for the 17. Yet when he claimed there was some unprecedented number of filibusters in the Senate, he is counting that. There has not been this situation.

So this is part of the tension we are involved in, and we remember that brooding over all of this is the Affordable Care Act—Obamacare—and how that legislation was opposed by a substantial majority of Americans, consistently 2 to 1. Virtually 2 to 1 consistently the American people rejected ObamaCare. They told this Congress not to pass it. We did everything we could on the Republican side to keep it from passing. We pleaded with our colleagues not to do this.

But, oh no, they had to pass it. President Obama wanted it, and they were going to pass it. We would find out later what was in it. That was literally the gist of what happened.

Senator Scott Brown from Massachusetts—liberal Massachusetts, the home of Ted Kennedy, who believed in government's involvement in health care—was elected on a promise in Massachusetts to be the vote to kill it. There was a vacancy. Senator Kennedy's death had created this vacancy, and Senator Brown campaigned to kill and be the vote that would deny the Democrats the 60th vote, in essence.

So what did they do? They used the reconciliation budget process to pass this monumental policy change in America in a way that kept Scott Brown—and the American people, through the electoral process—from ending this piece of legislation that put us in the position we are in today, where you don't get to keep your doctor, you don't get to keep your health care, where deductibles are going through the roof, where the price of insurance is going up, where people are not being hired, where two-thirds of the people who get a job this year in America only get a part-time job, which is clearly being driven by business interests in trying to avoid being caught up in the obligations of the Affordable Care Act. But the Democrats insisted.

Senator REID has used every parliamentary maneuver possible to block any votes that would actually fix this bill or alter it in any way.

So I just have to say we are at a point where we have to wonder whether democracy is happening in the Senate.

So we go back home. People get elected to the Senate. They campaign, and they say they want to go to Washington and change ObamaCare. Have we had a single vote this year to change ObamaCare? No, because Senator REID knows how to fill the tree and block any votes and keep it from happening. We are not voting on it.

The House has repeatedly passed all kinds of legislation and sent it to the Senate, supposedly to cause us to respond to it, to review the legislation, to have votes, offer amendments and see what kind of response we would have to fixing the problems with ObamaCare. But what happens? Senator REID obstructs that process. He does not allow these votes to occur. They might as well have thrown their legislation down the well.

What good is it for the House to send a bill to the Senate if it never gets brought up on the most important issue facing our country today—health care? We can't even have a debate about it or vote about it. Is this the great Senate that Robert Byrd referred to?

What about the Defense bill? The Defense bill is over here now. It spends over $500 billion—about half of the discretionary spending the United States Congress spends. What are we told? We are told the Senate is too busy. We can't bring up the Defense bill and have an amendment. No more amendments. The two little amendments that were voted on in an entire week are all we are going to get. No more amendments will be accepted. We are going to pass the bill as it is or we can vote no on it.

Why? Why? Because Senator REID knows there are some very important issues involved in the Defense bill and they are controversial. People have different views about them, and some people on his side of the aisle don't want to vote on those because they have to stand up before their constituents and before America and before the world and actually cast a vote and be accountable for their tenure in the Senate.

Members on this side, such as Senator TOM COBURN, have ideas to fix the Defense Department and to save money. But Senator REID won't give him a vote on it, and he objects. Senator REID says: Senator COBURN, you are obstructing. You are one of those Republican obstructionists. You don't get a vote, Senator COBURN. I decide who votes here. I have filled the tree. I know how to fill the tree. I am the majority leader, and if you want a vote, you have to ask me, and I'm not giving you any more votes. I have had enough of you guys.

That is kind of the way it has been. It is the way it has been with the ObamaCare bill and with the Defense bill. The very idea that national security is at stake and we have a $500 billion Defense bill—now, I'm on the Armed Services Committee, and we tried to work together. We basically had an almost unanimous vote on it. Last year we had a unanimous vote on the Defense bill. But there are still matters we carry to the floor with the full understanding there will be debate and votes on those disputed issues and the whole Senate would get to vote on them. They are not being allowed to vote on those.

This is unusual, colleagues. This has never happened in the history of the Senate. There was a study that found in the last 28 years previous to Senator REID, the tactic of filling the tree to limit debate was done 40 times. Since Senator REID has been the majority leader, he has done it 77 times. It is every time, really. He is in complete control of the amendment process in the Senate.

We had a Democratic colleague who said he thought he had to get approval of the Republican leader, Senator MCCONNELL, before he could get his amendment voted on. Why? Well, Senator REID says the Republicans filed 20 amendments. Senator REID says: You can only have three. So he starts with Senator MCCONNELL, and Senator MCCONNELL says: That is not enough, Senator REID. You can get five, but I want to approve them. I suppose Senator MCCONNELL may say: How many are you going to have? I want to know what they are before I reach an agreement with you.

So I suspect it may be true that we have Democratic Senators having to ask the minority leader of the Senate for approval to get their amendments up.

That is not the way this should operate. It has never operated that way. Our history is open and free debate, unlimited debate in which the great issues of our time can be discussed here and actually voted on. And our constituents back home, if they don't like the way we are voting, can vote us out of office and send somebody else up here. So politics is driving it. There is no other reason.

The contention is that there wasn't enough time to vote on the Defense bill, but the Defense bill was on the floor an entire week. We could have had 10 votes a day, 15 votes a day easily on the Defense bill.

Senator INHOFE, the ranking Republican on the Armed Services Committee, told Senator REID he had limited the number of amendments that Senators on our side had to 25, and those could have been done easily in a week. But what was also true, as Senator INHOFE noted, was that a lot of those votes would actually never occur because a person would realize they didn't have the votes to pass, the manager of the bill would agree to some of the amendments, or something else would happen. So it is very unlikely that many votes would have been cast. But that is what we have done in the past. We have had 2 and 3 weeks of time spent on the Defense bill, and we have had multiple amendments—30, 40, 50 amendments—and that has just ended.

So here we are, at a time when our country has a crisis on its hands, the American people are suffering from a massive takeover of health care that was rammed through this body against their will, and they still remain steadfastly opposed to it. Those of us who share those same concerns and want to change and alter this bill that is damaging to our economy, that is damaging health care, that is hammering the middle class, we can't even get votes on it because we have a leader

who has dictated how things are done here.

This has to end. It has to end. It cannot continue. I don't see how any Member of this body can go back home if they are a Democrat and say: I couldn't get up an amendment.

Why?

Well, Senator MCCONNELL wouldn't let me.

I go back home to my State, and others go back home to their States, Senator TOOMEY goes back to Pennsylvania and says: I offered all these amendments to improve ObamaCare.

His constituent says: Well, did you vote on it?

No.

Why not?

Senator REID wouldn't let me.

Where did this become part of the history of our country? Is this what we teach our children in grade school about how democracy is supposed to work? No. It has to end.

I appreciate the opportunity to share these remarks tonight. We are at a point where this Senate has to stand, reverse the trends that have been going on, and ensure that we operate in an open way. People have to vote and vote and vote so they can be held accountable to the people who sent us here. And when we make people mad, they have every right to vote us out of office. We don't have any right to come here and hide under our desks, not to expose ourselves, not to let people know how we really feel and how we have really been moving the country.

So I think the tea party rightly has concerns about that kind of thing, and I hope we can make progress to improve this situation that is essential for our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I rise as we consider the nomination of Deborah Lee James as Secretary of the Air Force, and I wish to touch on some of the points that were made by the Senator from Alabama.

I wish to state how much I appreciate his leadership, especially as the ranking member of the Budget Committee, his consistent leadership and fighting for fiscal discipline and putting our country back on a sustainable fiscal path, his commitment to an open amendment process, the opportunity to have vigorous debate in the Senate so that this body can work its will, and, of course, his work on the Armed Services Committee. I appreciate all of that, and I appreciate him being here tonight.

I do think it is important we have a discussion about how we got here, a discussion about the circumstances that have led to this completely unprecedented moment.

In the entire history of the Republic, we have never found ourselves in this circumstance where a majority party has decided that they alone should have sole say in who shall be appointed to the executive branch and who shall have the lifetime appointments to our Federal bench. I am one who believes this will very likely have very detrimental effects because when one party can ram through their choice without having to give any regard whatsoever to what the other party thinks, then what do we get? We get legislation like ObamaCare and we have extremes in the nominations that will eventually be confirmed.

Any President comes under pressure from the extremes within his or her party to put the most extreme people in positions of power, and the Senate has played a vital role in moderating that extreme, that tendency, that pressure, because it has virtually always been the case that neither party has 60 votes. Very seldom has it been the case that a party has had over 60 votes. So it has almost always been necessary that there be some broad bipartisan consensus on the people who will populate powerful posts as regulators and lifetime appointments to the bench.

That is no longer the case. There is no such check, and I fear that the consequences will be very detrimental: extremism in the regulatory agencies, volatility as we move from one administration to another and we have these swings, and probably the most disturbing of all is the real danger that the greatest source of pride Americans can have in their Federal Government, which has been an independent, nonpartisan judiciary—that very judiciary becomes a creature of the political and becomes captured by the political branches of government. That is the danger, and that is why it is important we consider how we got here and why we got here.

It is particularly extraordinary when we consider the statements of some of the leaders on the other side of the aisle, Democratic leaders who for years were passionately opposed to doing exactly what they did last month. The majority leader himself just a short time ago said:

> The right to extend the debate is never more important than when one party controls Congress and the White House. In these cases, a filibuster serves as a check on power and preserves our limited government.

Senator SCHUMER, the senior Senator from New York, put it this way:

> The checks and balances which have been at the core of this Republic will be evaporated by the nuclear option. The checks and balances say that if you get 51 percent of the vote, you don't get your way 100 percent of the time.

That was Senator SCHUMER and Senator REID. There are many other quotes on the record in which they vigorously opposed the notion of denying the minority any say in the confirmation process when it was discussed but never implemented some years ago. So why would they have such a 180-degree reversal? Why would their opinion and that of the vast majority of my Democratic colleagues have changed to the point where they would actually take this absolutely unprecedented step?

Senator REID gave an explanation on the day he inflicted these changes on this body. I will quote from Senator REID's explanation. He said:

> There has been unbelievable, unprecedented obstruction. For the first time in the history of our Republic, Republicans have routinely used the filibuster to prevent President Obama from appointing his executive team or confirming judges.

That is what Senator REID said. So it has been about Republicans obstructing the President from appointing his executive team and confirming judges.

Well, let's consider the case of judges to start. Let's take a look at this chart. Since President Obama has been President, there are some very simple, very easily verifiable facts we can look at.

The President has sent nominees for the Senate to consider since he became President. The Senate has confirmed 215 of those nominees, but the Senate has blocked 2 of his nominees. These are verifiable facts. They are not in dispute. These are the numbers. In total, the President has sent us the names of 217 candidates for judgeships, and 215 were confirmed and are sitting judges and 2 were blocked.

There is another category of nominees; that is, the executive branch nominees—the various agencies and regulatory bodies that are subject to senatorial confirmation. The President has sent us a total of 1,494 nonjudicial executive branch nominees. The Senate has confirmed 1,492. The Senate has blocked two.

The math is not that complicated. The President has nominated and sent to the Senate for our consideration a total of 1,711 altogether, and the Senate has confirmed 1,707. The Senate has blocked four. If you do the math, that is a confirmation rate of 99.8 percent.

So of all the nominees the President has sent to this body to be confirmed, we haven't actually confirmed every one; we have only confirmed 99.8 percent of them. Of the 1,711, we have blocked 4.

I would suggest that the power of advice and consent—the Constitution says advice and consent; it doesn't just say advice. If it just said advice, then that would clearly imply that the President could ignore the advice if he chose. But it doesn't just say advice; it says advice and consent. The power to consent clearly and obviously implies that under some circumstances that consent would be withheld. If not, there is no meaning to this at all.

So I would suggest it is patently absurd to suggest that a 99.8-percent confirmation rate is a pattern of obstruction, as we have been accused of. So that can't be the real reason, obviously. Obviously, this kind of record of almost universally approving Presidential nominees can't possibly be the real reason we had this unprecedented power grab and rules change.

So what was the real purpose? What was the real motivation behind this very dramatic development? I am here

to tell you that I think it is very clear what the real motivation was. The motivation was to pack the DC Circuit Court of Appeals so that a partisan group of judges would validate an agenda that this administration and many of our friends on the other side of the aisle want to impose.

That is an outrageous thing to say in some ways. Some people might think that is quite an accusation. What would be my basis for saying something like that? It would be the fact that Senator REID and Senator SCHUMER told us that was their reason. They said so. I will get to their quote, but let me explain why this has been done.

The fact is that elections have consequences. The President of the United States was elected. The Republicans have been enormously deferential in confirming his nominees, among other things.

But in 2012 the President wasn't the only person on the ballot. The entire House of Representatives was on the ballot, and the American people chose to reelect a Republican majority in the House of Representatives. Those elections have consequences as well, and one of the consequences of that election—the set of elections that produced a Republican majority in the House and left many Republicans in the Senate—is that the more liberal aspects of the President's agenda can't pass in Congress. They are not supported by a majority of the American people. They are not supported by majorities in Congress. Things like cap and trade, card check, the war on coal, and recess appointments don't have support. I don't think they have broad support in either body, certainly not enough in the House of Representatives to pass.

So what is a President to do if he can't get his legislation passed but he nevertheless wants to pursue an agenda? Well, one way a President could choose to do this—especially one who is not interested in working with the minority party—and let's face it, ObamaCare is the clear example that this President is not interested in the input of Republicans. That was jammed through without a single Republican vote in either the House or the Senate. There was no input from Republicans. There was no consideration for what the minority party considered. There was not a broad consensus.

It is not surprising that a very short time later there is a big majority of the American people who do not support this bill because it was never designed with enough input and enough buy-in to have that broad consensus. If a President is not interested in working with the minority party and he cannot get his legislation through because there are not enough members of his party in Congress, the alternative is to try to impose it through the regulatory process, through the agencies, through the regulators, through the executive branch, which has become enormous and enormously powerful.

There is only one big hurdle for a President to try to go down this road and that hurdle is that eventually people who are the victims of an overreaching group of regulators and administrators and agency heads, they have recourse. If they think that a given regulator is acting unfairly or illegally or unconstitutionally, they can go to court and in fact people do that. Guess what court ends up hearing the appeals and making what is very typically the final decisions, as a practical matter, regarding Federal regulations. Why, it is the DC Circuit Court of Appeals. That is the way our Federal system works.

In fact, the DC Circuit Court has generally been upholding the laws. I believe the evidence is very clear that it is a capable, competent, nonpartisan group of talented judges who make decisions as they see fit. They call balls and strikes, as referees ought to. Among their decisions, for instance—I am sure I do not agree with all of them but they did block what I thought was an illegal overreach by the EPA, inconsistent with the laws regulating EPA. They did not believe the President had the right to decide when Congress was in recess and make appointments that suited him when we were not able to deny consent. That was the DC Circuit Court's decision. This, and several others, were completely unacceptable to some of my Democratic friends. It was unacceptable this independent, nonpartisan court might reach decisions that were inconsistent with the liberal agenda.

How do we know this was unacceptable? We have some quotes. The senior Senator from New York, Mr. SCHUMER, discussed this. He was speaking to a group of supporters. It is on the record. He complained that the DC Circuit overturned the EPA's ability to regulate existing coal plants. He complained the SEC cannot pass rules unless they do what is called a cost-benefit analysis. He complained they struck down the administration's illegal recess appointments to the NLRB. He told a group of supporters that Democrats ''will fill up the DC Circuit one way or another.''

That was the quote. It was pretty straightforward, I will give him that. It is pretty candid. We do not like the decisions that are coming out of this court so we will pack the court with people who agree with our ideology.

Senator SCHUMER was not the only one to make this case. Senator REID had this to say of the DC Circuit:

> They are the ones who said the President can't have recess appointments. They have done a lot of bad things. So we are focusing very intently on the DC Circuit. We need at least one more. There are three vacancies. We need at least one more and that will switch the majority.

This is Senator REID on the DC Circuit: ''We need at least one more,'' obviously referring to a judge. ''We need at least one more and that will switch the majority.'' I think it is pretty clear what was going on here.

Now fast-forward to a few weeks ago. There was just one obstacle to putting the people who would agree with Senator SCHUMER and Senator REID on the DC Circuit Court and render the decisions they wanted. The obstacle was Republicans were not interested in going along with the scheme to pack the court for ideological purposes. They didn't think that was a very good idea. They thought it was probably better to have judges who were not there to try to advance a political agenda but believed their job is to apply the law as written and make sure it is consistent with the Constitution as opposed to pursuing a political agenda.

Despite the fact that Republicans had to that point confirmed 99.8 percent of all the President's nominees, that was going a little bit too far, to simply blatantly pack the DC Circuit Court, and we said no to the three nominees who were people they were intending to pack that court.

When we did, Senator REID, after publicly promising he was not going to change the rules this way just this past summer, nevertheless did exactly that. Despite the fact the Senate rules are very clear to change the rules requires a vote of 67 Senators, precisely so there would be a broad consensus behind the rules, Senator REID changed the rules with a mere 51 votes. He broke the rules so he could change the rules so the Democratic majority can now steamroll through and rubberstamp all of the President's nominees, including those necessary to pack the court so they can pursue the agenda they want to pursue. This is not my speculation. These are the quotes from the man who helped to organize this effort.

It is, frankly, very reminiscent in a lot of ways of ObamaCare: Steamroll through Congress, one party, no input from the other party, the minority party, and a complete disaster. By the way, the other big similarity is the broken promises. Senator REID clearly, unambiguously, unequivocally, unconditionally made the promise that he was not going to change the rules and then he did.

Then what have we been hearing about ObamaCare? One broken promise after another.

What I am going to do for the remainder of the time that I consume this evening is remind all of us of some of the promises that were made. Then I am just going to read a small sample of the emails that have been coming into my office from Pennsylvanians who have learned firsthand, the hard way, the painful way, just how untrue these promises were.

The first one is maybe the most famous of the promises. This is the President's repeated promise, echoed by many others, and I will quote: ''If you like your health plan you can keep your health plan.'' I don't know how many times the President said it, but we have all seen it, we all know it. But what is particularly maddening is we also know something else. We know everybody who said this always knew this

was not true. It was not true because the design of the bill forbids people from keeping health insurance plans in many cases—not all cases but many cases—and the authors of the bill and the supporters of the bill and the people who voted for the bill knew full well that one of the purposes of the bill was to establish government-approved standards for all insurance plans.

If your plan did not meet those standards, you were going to lose your plan. So this is what some folks have written to us about this promise, that if you like your health plan you can keep your health plan. This was just 2 days ago, a gentleman from Lancaster County from Pennsylvania wrote:

As my Congressional representative, you need to know how ObamaCare is harming my life and health care.

I work for a small construction company. My cost for family health care was already over $11,000 per year. We received notification that our policy was being cancelled since it did not comply with the requirements of the ''Affordable Care Act.''

Our company looked for the best rates they could find for comparable coverage which did comply. They chose a new insurance company. We just recently were given the costs for next year. My cost to cover myself and my family will be over $17,500 per year (a 59-percent increase). Even with that, the deductibles and out of pocket maximums are higher. This is not ''Affordable Care.'' This would eat up a major part of my income.

I attempted to log onto the healthcare.gov website several times, but always get kicked out. I do not hold up much hope that I will get any better rates, because I do not qualify for a credit.

We were already struggling to live on my take home pay. We cannot afford to have it reduced by over $6,500. We may have to drop health coverage for my wife or kids, and pay the penalty.

I suspect this law will result in many more people losing their health care, at the expense of a few getting free or reduced healthcare.

Another from a gentleman from Cumberland County last week.

My wife Barb and I have been trying for almost three weeks to get signed up. . . . all income and health info and private information is on the unsecured Web site and the application is accepted . . . but we have not been able to get on and pick the plan or get our price. . . . so nobody has been paid. Thus our cancelled insurance ends on December 31st and we look to be out.

A BIG mistake by the folks that voted for this . . . I've had cancer a couple times, my wife has had cancer and we both see our doctors when needed. This ACA will ruin many families if we can't get on to an insurance plan.

These folks are not only losing the insurance they have, but they have not been able to get an alternative plan.

A woman from Lebanon County, Pennsylvania, last week sent me this email.

We had our healthcare discontinued, and after an appeal were able to get it reinstated, but only for this year. Currently we have a healthcare savings plan, with a deductible of $3,000 a year. . . . In the new plan, our deductible would increase to $12,000 . . . and our premiums would increase to $9,000 a year. How is a middle class married family supposed to pay for that?

This is absolutely ridiculous, and this is our situation. I hope every government worker has to purchase their plan through this plan.

A gentleman from Delaware County sent me this email last week.

I am 66 and I am on Medicare. My wife, Mary Ann is 63. Her insurance company canceled her ''longstanding'' policy due to the requirements of the ACA. Her ''new'' policy costs $350 more per month. We are on a strict budget. . . . We are the hard working middle class. Who stands for us?

A small business owner in Cumberland County, Pennsylvania, December 3, 2013:

I am a small business owner with 3 employees looking for health insurance. My old policy is being canceled and was offered a replacement policy which is 68% higher than the old policy with higher deductibles. I went through the healthcare.gov site and was quoted an individual policy for my family which is 74 percent higher, with higher deductibles.

When do I see affordable health care for my family?

I have been self-employed for 19 years and have paid for my insurance all these years myself. With deductibles I am looking at $26,000 out of pocket for health insurance this year. Please Help!

Another promise that we heard—these were people, real people who were demonstrating how untrue was the promise that you could keep the health insurance plan that you have. But there was another promise we heard frequently and that promise was, ''If you like your doctor, you will be able to keep your doctor, period.'' The President added that flourish at the end, ''period,'' just to emphasize. These are the President's words: ''If you like your doctor, you will be able to keep your doctor, period.''

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The messages received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:33 a.m., a message from the House of Representatives, delivered by Mr. Hanrahan, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1471. An act to authorize the Secretary of Veterans Affairs and the Secretary of the Army to reconsider decisions to inter or honor the memory of a person in a national cemetery, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1992. An act to amend the requirements relating to assessment of Israel's qualitative military edge over military threats, and for other purposes.

H.R. 2019. An act to eliminate taxpayer financing of political party conventions and reprogram savings to provide for a 10-year pediatric research initiative through the Common Fund administered by the National Institutes of Health, and for other purposes.

H.R. 2319. An act to clarify certain provisions of the Native American Veterans' Memorial Establishment Act of 1994.

H.R. 3212. An act to ensure compliance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction by countries with which the United States enjoys reciprocal obligations, to establish procedures for the prompt return of children abducted to other countries, and for other purposes.

ENROLLED BILLS SIGNED

At 3:11 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1471. An act to authorize the Secretary of Veterans Affairs and the Secretary of the Army to reconsider decisions to inter or honor the memory of a person in a national cemetery, and for other purposes.

H.R. 2871. An act to amend title 28, United States Code, to modify the composition of the southern judicial district of Mississippi to improve judicial efficiency, and for other purposes.

H.R. 2922. An act to extend the authority of the Supreme Court Police to protect court officials away from the Supreme Court grounds.

The enrolled bills were subsequently signed by the President pro tempore (Mr. LEAHY).

At 8:22 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3695. An act to provide a temporary extension of the Food, Conservation, and Energy Act of 2008 and amendments made by that Act, as previously extended and amended and with certain additional modifications and exceptions, to suspend permanent price support authorities, and for other purposes.

The message further announced that the House agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 72. Concurrent resolution providing for corrections to the enrollment of H.J. Res. 59.

The message also announced that the House recedes from its amendment to the amendment of the Senate to the joint resolution (H.J. Res. 59) making continuing appropriations for fiscal year 2014, and for other purposes, and agrees to the amendment of the Senate with an amendment, in which it requests the concurrence of the Senate.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated: