SENATE RESOLUTION 66—EXPRESSING SUPPORT FOR THE DESIGNATION OF FEBRUARY 12, 2015, AS ''DARWIN DAY'' AND RECOGNIZING THE IMPORTANCE OF SCIENCE IN THE BETTERMENT OF HUMANITY

Mr. BLUMENTHAL submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 66

Whereas Charles Darwin developed the theory of evolution by the mechanism of natural selection, which, together with the monumental amount of scientific evidence Charles Darwin compiled to support the theory, provides humanity with a logical and intellectually compelling explanation for the diversity of life on Earth;

Whereas the validity of the theory of evolution by natural selection developed by Charles Darwin is further strongly supported by the modern understanding of the science of genetics;

Whereas it has been the human curiosity and ingenuity exemplified by Charles Darwin that has promoted new scientific discoveries that have helped humanity solve many problems and improve living conditions;

Whereas the advancement of science must be protected from those unconcerned with the adverse impacts of global warming and climate change;

Whereas the teaching of creationism in some public schools compromises the scientific and academic integrity of the education systems of the United States;

Whereas Charles Darwin is a worthy symbol of scientific advancement on which to focus and around which to build a global celebration of science and humanity intended to promote a common bond among all the people of the Earth; and

Whereas February 12, 2015, is the anniversary of the birth of Charles Darwin in 1809 and would be an appropriate date to designate as ''Darwin Day'': Now, therefore, be it

Resolved, That the Senate—

(1) supports the designation of ''Darwin Day''; and

(2) recognizes Charles Darwin as a worthy symbol on which to celebrate the achievements of reason, science, and the advancement of human knowledge.

SENATE RESOLUTION 67—AMENDING RULE XXII OF THE STANDING RULES OF THE SENATE TO REVISE THE NUMBER OF AFFIRMATIVE VOTES REQUIRED TO END DEBATE ON NOMINATIONS

Mr. ALEXANDER (for himself and Mr. LEE) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 67

Resolved,

SECTION 1. CLOTURE RULE.

The second undesignated subparagraph of paragraph 2 of rule XXII of the Standing Rules of the Senate is amended by striking ''And if that question'' and all that follows through ''disposed of.'' and inserting the following: ''If the question is decided in the affirmative in the case of a nomination on the Executive Calendar by a majority of the Senators duly chosen and sworn; in the case of a measure or motion to amend the Senate rules by two-thirds of the Senators present and voting; and in the case of any other measure, motion, or matter, by three-fifths of the Senators duly chosen and sworn, then the foregoing measure, motion or matter pending before the Senate, or the unfinished business, upon which the question was decided in the affirmative shall be the unfinished business to the exclusion of all other business until disposed of.''.

Mr. ALEXANDER. Mr. President, I am especially pleased to see that the Senator from Utah is presiding this afternoon because I come to the floor today to offer a resolution which is his inspiration, really, and on which I am pleased to be working with him.

Simply put, this is a resolution to establish a majority vote on Presidential nominations. This would establish by rule the Senate tradition of approving Presidential nominations by a simple majority vote. The rules change we propose would establish by rule this tradition of approving Presidential nominations of Cabinet Members and judges by a simple majority vote, which existed from the time Thomas Jefferson wrote the rules in 1789 until 2003, when Democrats began filibustering Federal Circuit Court of Appeals nominees.

Most importantly, it would change the rules in the right way, through a two-thirds vote, which is what the existing rules of the Senate provide. Unfortunately, on November 21, 2013, Democrats broke the Senate rules without even attempting to get the 67 votes required to change the rules, which caused former Senator Carl Levin, a Democrat from Michigan, to say at the time, quoting former Senator Arthur Vandenberg of Michigan, that ''if a majority of the Senate can change its rules at any time, there are no rules.'' We are the Nation's rulemaking body. If we cannot follow our own rules, how can we expect the American people to show respect for and follow the rules we help to create?

The proposal Senator LEE and I have made will be considered by the Senate Committee on Rules and Administration, according to the Senator from Missouri, Senator BLUNT, the chairman of the Rules Committee. It would ultimately require a two-thirds vote of the Senate to change the Senate rules. This all has to do with the so-called nuclear option.

If I might say an additional word about the so-called nuclear option, I came to the Senate in 2003, which was when our Democratic friends decided they would use cloture, which requires 60 votes to cut off debate, as a way of denying a Presidential nomination on a Federal circuit judge. It had never in the history of the Senate been used before in that way. Cloture had been used twice, I believe, based on my research, to deny a sub-Cabinet member a position in the 1990s, but that was the first time it had ever been used on any such position with the exception of Abe Fortas.

It is important, given all the misinformation that has been spread about the nuclear option, to know what the facts are. The tradition has always been in the Senate that Presidential nominations deserved an up-or-down, 51-majority vote. That has basically been the tradition. Even with the most controversial nominations, such as that of Clarence Thomas, the Supreme Court Justice—I believe the vote was 52 to 48—there never was a suggestion that someone might use cloture to require it to be 60 votes. Cloture didn't apply to nominations until 1949, so it was never used between the time Jefferson wrote the rules at the beginning of the Senate and 1949.

It was first used in 1968, but not really. President Johnson was trying to save face for Abe Fortas, his friend who was a Supreme Court Justice. He had nominated him for Chief Justice. A problem came out, and President Johnson engineered a 45-to-43 cloture vote, which Fortas ''won.''

That is really the only exception in the whole history of the Senate until 2003, when the Senate said it is going to take 60 votes to confirm a Presidential nomination for a judge rather than the traditional 51.

I have talked to several of my colleagues on the other side about this issue. They are fairly straightforward about why they did it. They thought President George W. Bush's nominees were ''too conservative.''

I knew some of those judges—Judge Pickering of Mississippi, for example. He put his children into a public school in Mississippi in the 1960s, and he was being accused of being a segregationist when he was actually leading the charge in his State of Mississippi to desegregate the public schools.

William Pryor of Alabama was a law clerk for Judge John Minor Wisdom. I know the distinguished Senator from Utah, who was a Supreme Court law clerk, knows of Judge Wisdom. He was regarded by everyone as one of the finest Federal circuit judges in the country. He had the greatest respect for William Pryor. He would have been shocked to hear what was said about him at the time.

It was a shocking thing to me to arrive in the Senate in 2003 and find my friends on the other side of the aisle for the first time in Senate history saying it would take 60 votes to confirm President Bush's judges. I strongly objected to that. I even suggested that if a few Senators on this side and a few Senators on that side would work together, we could break the stalemate. A Gang of 14 was created. It did break the stalemate, but as a result, five judges nominated by George W. Bush were not confirmed because the other side decided they didn't like their philosophical views. So instead of a 51-vote margin, they required 60, and so they weren't confirmed.

This is the tally in the history of the Senate. The number of Supreme Court nominees in the history of our country who have ever had their nomination denied by filibuster, by a cloture vote, is zero, with the exception of the Fortas nomination, if you want to

count that. Not a single one. Supreme Court nominations are among the most controversial nominations ever before the Senate.

The number of Cabinet members who have ever had their nominations denied by a filibuster, by requiring 60 votes in the history of the Senate—zero. Not one. Not an Obama nominee. Not a Clinton nominee. Not a Bush nominee. Zero. Not one.

Let's go to district judges. There has been a lot of talk about district judges and how difficult it was for President Obama to have district judges confirmed. There is no truth to that whatsoever. I was in the Senate; I know that. I will give an example. There was an effort to deny a seat to a judge from the State of Rhode Island by 60 votes, a judge whom I didn't support, but I and a group of other Republicans made sure we did not use cloture to deny a seat to a President's district judge nominee for the first time in history, and so we did not.

So the number of Federal district judges in the history of the United States who have ever had their nomination denied by a filibuster, by the 60-vote cloture rule, is zero.

So Supreme Court Justices, except for Fortas, Cabinet members, district judges—zero. Filibusters have not been widely used in the history of this Senate to deny a President his nomination. However, there are other problems that nominations have.

I was nominated once. I came to be nominated to be the Secretary of the Department of Education. A Senator from Ohio, Senator Metzenbaum, put a so-called secret hold on my nomination and held me up for 3 months, but then when I came to the floor, I was confirmed. We have abolished those kinds of secret holds. We have made changes in the rules to make it easier for the President's nominees to be confirmed.

There have been seven sub-Cabinet members, including John Bolton—three Republicans and four Democrats—who have had their nominations rejected because of a cloture vote, all since 1994. So no Cabinet members, no Supreme Court Justices, no district judges, seven sub-Cabinet members.

What is the score on circuit judges? This is what brought up the fuss in 2003 when the Democrats filibustered 10 nominations because they were too conservative. As I mentioned earlier, five were confirmed and five were rejected as part of the compromise. Since that time, Republicans have rejected two Democrats. So the score is the Democrats have rejected five Federal Circuit judges and Republicans rejected two. Republicans actually rejected three others, but that led to the events of November 21, 2013, when the Democrats broke the rules to change the rules.

It would be as if in a Super Bowl or in a playoff game, let's say, Seattle gained 9 yards and they needed 10, so they changed the rules because they were the home team and said that is a first down. No one would have any respect for the game if they did that, and no one will have any respect for the Senate if we keep doing that, which is the point Senator LEE and I would like to make because the tradition of the Senate has always been to give to a President the prerogative of allowing his nominations to be confirmed by 51 votes or a simple majority of Senators duly chosen and sworn. We propose to change the rule to reflect the tradition of the Senate.

Some say: Well, why don't you do to them what they did to you?

I don't think that is a very good way to live your life. I mean, if the Democrats did the wrong thing, if they brought the Senate to its knees, if they made the Senate into a place that doesn't follow its own rules, then we should do that to them? No. I think what we should do is replace bad behavior with good behavior, and good behavior means we adopt changes to the rules in the way the rules require, which is, in effect, 67 votes or two-thirds of the Senators present and voting.

So we will be offering our resolution, as we do today. We will be offering it in the Senate Rules Committee. We hope the Senate Rules Committee will approve it and report it to the floor. We hope Senator MCCONNELL will find time on the floor to bring it up. We hope that 67 of our colleagues will agree with it. We will show the country that we know how to follow our own rules and that we know how to take the tradition of the Senate, which has been there since Thomas Jefferson wrote the rules, with very few exceptions, to make sure that Presidential nominees are entitled to an up-or-down vote by a majority of the Senate. That has been the rule, that has been the tradition, and that should be the rule, and the rules should be changed in the way that rules are supposed to be changed.

There is one other issue I wish to mention without going into any length about it. What happened in the Senate on November 21, 2013, was the lowest point in the Senate that I have seen. The majority decided that because it didn't have the votes to put three judges—liberal judges—on the DC Court of Appeals, it would break the rules to change the rules, and it just put them there anyway. It pretended that the reason it did that was because President Obama couldn't get his nominees confirmed.

Well, on every Senator's desk is an Executive Calendar. Everyone who can be confirmed has been reported by a committee to the floor and is listed on the Executive Calendar. There is only one way to get on this calendar—there was only one way on November 21, 2013, and that was for a Democratic majority in a committee to report a nominee to the floor of the Senate. That was the only way you could get there. Republicans couldn't do it; only the Democrats could. So on November 21, 2013 the calendar was filled only with people the Democratic majority had approved of.

There was only one way for anyone to get off the Executive Calendar and onto the floor of the Senate to be confirmed, and that was for the Democratic leader, the majority leader, to move to do that. We can't object to that. We have to vote on it. There is no motion to proceed with a nomination; he can bring it up anytime he wants to.

The charge was made that there was a big backlog of people on this calendar. Well, here are the facts, and anyone who doubts it can look at the Executive Calendar for November 21, 2013, and they will see what the backlog was. There were 78 regular order nominations on November 21, 2013. Fifty-four of those nominees had been on the calendar less than 3 weeks. Sixteen had been on the calendar between 3 and 9 weeks. Eight had been on the calendar for more than 9 weeks.

There was an informal agreement between the floor staffs that 40 of the uncontroversial nominees on this calendar—40 of the 78—could be confirmed before the Senate left at the end of the week.

Let me use a specific example—district judges. We hear a lot about district judges. We had changed the rules at the request of the majority leader to make it easier to confirm district judges. We basically said that there could only be 2 hours of debate on a district judge and the majority could give back 1 of those hours.

On the date the Democrats said there was a big backlog, there were 13 district judges on the calendar. Those were the only ones who could have been brought up by the majority leader. One had been waiting for more than 9 weeks. Four had been waiting for between 3 and 9 weeks. Eight had been waiting for less than 3 weeks. But the important point is that we could have confirmed them all over the weekend. All the majority leader had to do was to move the nomination of each of the 13, wait an intervening day, and then if they did that on Thursday, the intervening day would be Friday, and then we would come back on Monday and we would have 1 hour of debate for each of those nominations. So there was no excuse. There was no backlog.

The Washington Post and the Congressional Research Service said that President Obama's nominees were moving through the Senate at about the same speed that President Clinton and President George W. Bush's nominees had been at that time in their terms. That is what the Congressional Research Service and the Washington Post said.

The calendar speaks the truth about the absence of a backlog. And I was involved three times in working to change the rules to make it easier to do Presidential nominations. It was nothing more than a power grab. So our friends should just admit that and admit that it was the wrong thing to

do for the Senate. A lot of Senators weren't here then.

The resolution Senator LEE and I have proposed gives the Senate a chance to abandon bad behavior and begin to adopt good behavior, to take a tradition of the Senate that has been followed almost without exception since 1789 and make it the order of the day and to do it the way the Senate rules say it should be done—with 67 votes.

In closing, let me simply say that I appreciate the fact that I am able to work on this with Senator LEE. This legislation developed really from a conversation and a suggestion he made to me on the floor of this Senate. I thought about it, and I said: I think you may be right about that. We worked together, and because of his background in the law and his experience in the Supreme Court, his leadership on this issue has been invaluable.

I thank the Senator for his suggestions, I thank him for his leadership, and I look forward to working with him when it comes before the Senate Rules Committee. I hope we can persuade our fellow Senators in a bipartisan way that a good way to begin this year would be to begin to change the rules the right way and to reject the bad behavior and bad habits of the last session of Congress.

I yield the floor.

Mr. LEE. Mr. President, I wish to speak briefly in support of this resolution. First of all, I wish to thank my distinguished colleague, the senior Senator from Tennessee, for his leadership in introducing this legislation. The Senator from Tennessee has shown great leadership on this issue. With his mastery of the Senate rules, his familiarity with the procedures of the Senate, the Senate's history, and his love for the Senate as an institution, the sponsor of this measure understands and appreciates the importance of maintaining order in the Senate. It is to this issue I would like to speak briefly.

When the Senate made this change in November of 2013, what happened was all of a sudden we had a split—a split that occurred between on the one hand the wording of the rule itself that governs cloture, on the other hand the precedent by which the Senate purports to be governed. So separate and apart from what the history tells us—from how often the Senate either has or hasn't used cloture on the Executive Calendar—there is this separate distinction that has now arisen.

The cloture rule says it takes three-fifths—a vote of three-fifths of the Senators—to bring end to debate on a particular matter. The rule itself makes no distinction between the Executive Calendar and the legislative calendar. It makes no distinction between ordinary legislative business where we are legislating and making law on the one hand and on the other we are meeting to decide whether to confirm a Presidential nominee. The rule doesn't distinguish, but the precedent now does.

When our colleagues on other side of the aisle voted in November 2013, appealing the ruling of the Chair, they reversed the precedent. They acted contrary to the language of the rule itself. This creates a certain amount of uncertainty, and that uncertainty I think needs to be resolved. We don't want to operate in an environment in which we have the rule saying one thing and the Senate precedent saying another thing.

So it was out of a certain amount of practical necessity that we looked to this as an alternative. In order to bring Senate practice back into harmony with the rules of the Senate, the best way we could come up with to do that would be to change the language of the rule.

Of course to change the language of the rule it takes 67 votes. While we are not certain what is going to happen, this is perhaps the only thing we could think of that could possibly get 67 votes—67 Senators saying yes, we can do that.

So it is very important that we have rules that are clear—rules that will apply regardless of who is in the White House, regardless of which party happens to control the majority of the seats in this body. If, after all, we are making the rules that would govern the country, if, after all, we are being asked to confirm Presidential nominees to high positions, we need to be following our own rules.

We have to remember also that one of the things we have prided ourselves on, one of the things that has distinguished the Senate from other legislative bodies—we call ourselves the world's greatest deliberative legislative body—is because from the very beginning this has been the kind of place where in theory we will continue to debate things as long as basically any one Member wants to continue to debate. Cloture is an exception to that. Cloture allows for three-fifths of the Senators present to decide it is time to bring the debate to an end, even if a minority of Senators want to continue. But it requires a supermajority.

There are many reasons to do this, but one of the reasons I think is important to point out is because it protects the right of each Senator to continue to offer improvements, to point out flaws and offer potential improvements to legislation—the amendment process. The amendment process is itself of course different in the context of legislation than it is in the context of a Presidential nominee.

I am personally not aware of any means by which one can amend a nominee. I am not aware of any process by which one can confirm a Presidential nominee's right hand but not his left.

I support this change. I think this change is important for this body and for the continuity of the Senate rules and I am grateful to the senior Senator from Tennessee for his efforts in this regard, which I wholeheartedly support.

SENATE RESOLUTION 68—EXPRESSING THE SENSE OF THE SENATE REGARDING THE JANUARY 24, 2015, ATTACKS CARRIED OUT BY RUSSIAN-BACKED REBELS ON THE CIVILIAN POPULATION IN MARIUPOL, UKRAINE, AND THE PROVISION OF LETHAL AND NON-LETHAL MILITARY ASSISTANCE TO UKRAINE

Mr. JOHNSON (for himself and Mrs. SHAHEEN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 68

Whereas Russian-backed rebels continue to expand their campaign in Ukraine, which has already claimed more than 5,000 lives and generated an estimated 1,500,000 refugees and internally displaced persons;

Whereas, on January 23, 2015, Russian rebels pulled out of peace talks with Western leaders;

Whereas, on January 24, 2015, the Ukrainian port city of Mariupol received rocket fire from territory in the Donetsk region controlled by rebels;

Whereas, on January 24, 2015, Alexander Zakharchenko, leader of the Russian-backed rebel Donetsk People's Republic, publicly announced that his troops had launched an offensive against Mariupol;

Whereas Mariupol is strategically located on the Sea of Azov and is a sea link between Russian-occupied Crimea and Russia, and could be used to form part of a land bridge between Crimea and Russia;

Whereas the indiscriminate attack on Mariupol killed 30 people, including 2 children, and wounded 102 in markets, homes, and schools;

Whereas any group that fires rockets knowingly into a civilian population is committing war crimes and is in violation of international humanitarian law;

Whereas, even after the Russian Federation and the Russian-backed rebels signed a ceasefire agreement called the Minsk Protocol in September 2014, NATO's Supreme Allied Commander, General Philip Breedlove, reported in November 2014 the movement of ''Russian troops, Russian artillery, Russian air defense systems, and Russian combat troops'' into Ukraine;

Whereas, on January 24, 2015, NATO Secretary General Jens Stoltenberg stated, ''For several months we have seen the presence of Russian forces in eastern Ukraine, as well as a substantial increase in Russian heavy equipment such as tanks, artillery, and advanced air defense systems. Russian troops in eastern Ukraine are supporting offensive operations with command and control systems, air defense systems with advanced surface-to-air missiles, unmanned aerial systems, advanced multiple rocket launcher systems, and electronic warfare systems.'';

Whereas, on January 25, 2015, after Russian-backed rebels attacked Mariupol, European Council President Donald Tusk wrote, ''Once again appeasement encourages the aggressor to greater acts of violence; time to step up our policy based on cold facts, not illusions.'';

Whereas, on November 19, 2014, at a Committee on Foreign Relations of the Senate confirmation hearing, Deputy National Security Adviser Anthony Blinken stated that the provision of defensive lethal assistance to the Government of Ukraine ''remains on the table. It's something we're looking at.'';

Whereas the Ukraine Freedom Support Act (Public Law 113-272), which was passed by Congress unanimously and signed into law by the President on December 18, 2014, states