

How about unlimited amendments? How about give us a counterproposal?

I have been in these discussions with Republican colleagues for months. Again, save Senator MURKOWSKI on the John Lewis bill, there has been no help forthcoming to save our democracy, to save voting.

So, when colleagues ask, “Well, you signed a letter in 2017, and that letter said that we should preserve the ability of Members to engage in extended debate when bills are on the Senate floor. So why are you now contemplating rules changes?” my answer to them is that I am contemplating rules changes to do exactly that. We don’t have extended debate on the Senate floor. You can’t get bills on the Senate floor. Our democracy is under attack, and voting is under attack. Contrary to the previous 150-year history of your party, you won’t lift a finger to protect voting rights or protect the integrity of our elections, but because you won’t doesn’t mean we should not. In fact, if you won’t, the burden is on our shoulders even more.

Here is something else, I will be honest, that I have come to understand more about the filibuster since 2017. Then I want to conclude by offering some words of reassurance to my Republican colleagues.

The fact that the filibuster is now used indiscriminately against everything does not cleanse it of the stench of its predominant use in our history to block civil rights legislation. I mean, now we use the filibuster to block what might be a nonconsequential appointment. We use it for everything. However, when the history of the filibuster is written in this Chamber, the pivotal, epic moments that will get remembered are Robert Byrd’s 14-hour-and-13-minute speech to try to filibuster against the Civil Rights Act of 1964, Strom Thurmond’s massive filibuster against civil rights laws, and Senators from Virginia—Senators who held the seat that I now occupy—filibustering against civil rights laws.

You don’t cleanse the stench from the filibuster by just suddenly using it for everything. You still have to acknowledge it has played a particular role in the Senate. Sadly, that role has usually been to the detriment of the kinds of people who couldn’t see anybody who looked like them in the Senate.

I occupy a seat that was occupied for 50 years by Harry Byrd, Sr., and Harry Byrd, Jr. It is called the Byrd seat in the Senate because the Byrd machine ran Virginia politics, and they kind of owned it. Harry Byrd, Sr., was Governor in the 1920s and came to the Senate when Carter Glass died in 1933 and stayed until he died in 1966. His son, Harry Byrd, Jr., was then appointed to the Senate until 1983. For 50 years, the Byrds held the seat I now occupy.

I was at the inauguration of our new Governor in Richmond on Saturday, and I walked by an empty place on the Capitol Square where, just 6 months

ago, there was a statue of Harry Byrd, Sr.—the Governor who was a great highway builder and infrastructure guy; the Governor who came up with the idea and worked with President Roosevelt to build the Shenandoah National Park; the Governor who then, as Senator, led this Byrd machine and was viewed as the dominant figure in Virginia political life during the 20th century, together with his son, Harry Byrd, Jr.—but the statue was taken down. The statue was taken down 7 months ago.

The middle school that was named for Harry Byrd, Sr., in Henrico County was renamed 5 years ago to Quiccasin Middle School. Why was that? Highway builder, park developer, dominant political figure, his statue was taken down because of what he did in the U.S. Senate; that he would write the southern manifesto to rally Senators against *Brown v. Board*; that he would encourage Virginia public school systems—again, this is as a Senator, not as a Governor; he encouraged Virginia public school systems—to shut down rather than integrate; that he would engage in one filibuster after the next against civil rights legislation, including the Voting Rights Acts, and never apologized, never admit he was wrong, unlike Robert Byrd, who was a Klansman before he was in the U.S. Senate and who filibustered famously against civil rights legislation until he had an epiphany in 1968 when he voted for the Fair Housing Act and apologized for the rest of his life and became a civil rights champion. Harry Byrd, Sr., used the filibuster for, frankly, what it has been used for around here—to exclude people from the democracy. And the tributes to Harry Byrd and the statues and the school names are all coming down.

Even at the university in his own hometown, Shenandoah University in Winchester, which had named its business school after Harry Byrd, Jr., they wiped that name off, because the filibuster is not just like a Senate rule that can be used like anything else. It has been used for a particular purpose, and we can’t be blind to that.

But let me just say this, as I conclude. I want to offer my colleagues a reassurance—those who have asked why we are contemplating rules changes, those who signed the letter with us, because it was a bipartisan letter. It was led by Senators COONS and COLLINS, and many Republicans signed it. “We are united in our determination to preserve the ability of Members to engage in extended debate when bills are on the Senate floor.” For the first time in my Senate career, there is a voting rights bill on the Senate floor, and we will have a rules adjustment vote at the end of the day tomorrow, in all likelihood. And what will that vote be? Will the vote be to eliminate the filibuster? No. Will the vote be to abolish the filibuster? No. Will it be to weaken the filibuster? No.

Here is the vote that we will vote on tomorrow: Should we change the secret

filibuster that allows Members to just sit in their office and not take the floor and not explain their opposition to their colleagues and not have to face the American public? Should we change that secret filibuster into a public filibuster, the way it was done during the vast majority of Senate history, where Senators who went to block action by a majority should at least have to do the work, should at least have to come to the floor and explain to their colleagues and the American public why the majority should not act?

For everyone on the Republican side who signed that letter saying we should have extended debate on the Senate floor and it should not be curtailed, we are giving you a chance to do exactly what you pledged to do. For every one in our own caucus who has expressed reticence about weakening or diminishing the filibuster, we are giving you exactly the thing that you said you wanted—an opportunity to have full debate that could go on for a very long time and not be curtailed. And the only thing we will require is that that debate actually happen in the view of the American public and your colleagues, a fundamental opportunity for all of us to do the right thing by Senate rules to accomplish the right thing for our democracy. I so welcome the chance to finally have this debate on the floor of the U.S. Senate.

With that, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MERKLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

H.R. 5746

Mr. MERKLEY. Madam President, voting rights are really at the heart of our “We the People” Constitution.

I will tell you, every time I look at a printed copy of the Constitution and I see those three words in supersize font, “We the People,” I think, you know, it is a beautiful thing that our Founders, when they were writing the Constitution, reminded us of the heart of what it is all about: not power that flows down from Kings or dictators but power that flows up from the people of the United States.

And how does that power flow? It flows through elections. So if you don’t have integrity in the elections, then, you really don’t have government of, by, and for the people.

Now, over the course of our Nation, we know that we have worked to expand the vision the Nation was founded on, but it wasn’t reached in the beginning. It was often the case that only White Protestant male landowners got to vote in the beginning.

And we recognized that every person created equal needs to have an equal

part of the franchise, and so we have, through battles over more than 200 years, fixed those challenges. And there have been some dramatic debates over this, and it hasn't been easy.

But I want to take us back specifically to the debate of 1890–1891. Now, this was during a period when, in the Southern States, more and more clever strategies were being developed to prevent people from voting, either through the registration process or through the polling process.

Now, in the registration process, there would be things like: Explain what this letter of the Constitution means or how many beans are in this jar of jelly beans or other ridiculous questions, to which those at the registrar's office could say: We are sorry. You can't register.

And if you got registered, then you would have actually the possibility of intimidation at the polling place. There was one case where men on horseback formed a circle around the ballot box so, essentially, a Black American couldn't get to the ballot box, but for a White American, the horses would part and let them vote—voter intimidation.

Well, those crude barriers are part of history. They are in the dustbin. Great. But, unfortunately, there are many modern strategies designed to get to the same result, strategies to make it hard to register to vote. Sometimes it is very prejudicial ID requirements or multiple ID requirements designed to fit the profile that members of one party are more likely to have than members of another party to bias the outcome.

Sometimes it is taking and saying: We are going to be able to have a private contractor purge the voting rolls of people who haven't voted in the last few elections—knowing that it is being done specifically because the members of one party are a little worse at turning out every single election than the members of the other party.

Now, these strategies on registration are at one stage, and then there are the strategies at the polling place, all designed to undermine “We the People.” And they are mostly election-day strategies.

What are those strategies? Well, take a—have a really large precinct with a single voting location in places you don't want people to vote because so many people have to get into that precinct voting place that there will be a long line or understaff it so the movement through the polling place is slow or put in machines that don't work really well or put it in a location where there is no parking, which makes it really hard for people to get to the polls.

You might think that these strategies don't still exist, but I am sorry to report to you they absolutely do exist.

A member of our caucus today, CORY BOOKER, was noting that, across America, the average wait time for Black Americans is twice as long as the aver-

age wait time for White Americans. But in Georgia—in Georgia—in the last election, the average wait time was, by numbers that I have, 5 times as long or, excuse me, 10 times as long: about 5 minutes in a predominantly White precinct, 80 percent-plus White, and about 50 minutes in a predominantly Black precinct—about 10 times as long.

So along comes a couple strategies to really enable people to vote without that type of intimidation. One is vote-by-mail, and one is early voting.

Now, my State of Oregon is quite proud of being the first vote-by-mail State. So let's talk about that for a moment. Back in the 1990s, the Republican Party said: You know, we have noticed that people who have requested absentee ballots have a higher turnout rate than those who vote on election day.

It makes sense because they receive the ballot in the mail and have plenty of opportunity to fill it out, mail it in; whereas, on election day, well, life happens: You were planning to vote, but you had to go pick up your child from daycare. You were planning to vote, but your boss asked you to work late. You were planning to vote, but you went by the polling place, and it had been moved from the previous 2 years—another trick—and you didn't know where it was. You went by the polling place, but you saw a long line, and you knew you didn't have 3 hours to stand in that line.

So the Republicans in my State said: You know what, we will have an advantage if we get all the Republicans—or as many as we can—to ask for absentee ballots. And so they did. Then the Democrats said: That is pretty smart. We will do the same thing.

So the first year I was running for the State house of representatives, 50 percent of the people in the State were voting by mail by getting on a list to ask for an absentee ballot.

So everyone said: This is such a good idea; why don't we do this for everybody and not make people request absentee ballots. So in the next election, which was the 2020 election, essentially, it was all vote-by-mail. And people loved it.

I found out going door-to-door—I always kind of had a nostalgic point in my heart for election day when we all go to the polls together. And I would go door-to-door in my first campaign in 1988, and I would say: What do you like or what do you not like? And people would generally say: The thing that I am really frustrated about—and it would be some issue for transportation. It would be some problem, including just simply the potholes in the street.

And I would say: Well, that is a city issue, but I am running for the State legislature. But maybe the State can help get more money to the municipality. But what do you like?

Oh, we love voting by mail because we can sit at the kitchen table and talk over the issues. We are not trying to make decisions in the heat of the moment in a voting booth.

We have complicated ballot measures in my State.

We can read through the pros and cons. And—you know what—we can invite our children to the kitchen table and discuss it with them.

They really loved vote-by-mail, and we went to that system. But it wasn't something driven by Ds or Rs. In fact, Republicans controlled the house and senate of the legislature in the State of Oregon at that time. They controlled both chambers.

Utah went to vote-by-mail. Utah is a reliably Republican State. Again, it wasn't to advantage one party or the other; it was to ensure that the franchise is available for every single American and that there are no shenanigans on election day. And shouldn't that be what we are all about? Because if you really want to look at where voting is compromised, where essentially votes are stolen from our citizens, it is the shenanigans on election day, which means vote-by-mail and early voting are very important to address that.

So what do we see now in some 19 States across our country? In those 19 States, there are strategies being implemented to make it harder to register and easier to purge the registration lists. There are strategies to make it harder to vote by mail, including saying: There will be no permanent vote-by-mail list; you have to sign up every single time. There are strategies to limit and curtail early voting.

Every State is a little different, but those 19 States that are passing laws, those laws are targeted with strategies specifically focused on things that they think will hurt the turnout of Democrats rather than Republicans, and it is just wrong. We need to be blind to party divisions when we are protecting the ballot box for all Americans. We need to be blind to race.

Now, folks say: Surely, there is still not a racial component in this effort to keep people from voting. And I would like to affirm that that is the case, but these strategies often target predominantly precincts that are high minority populations: Hispanic or Black precincts.

And other strategies target the young and college students. Why? Because they tend to vote a little bit more to the Democratic side of the ballot.

And some of these are targeted specifically at Native American reservations to make it so those on reservations have to drive an hour to 2 hours to drop off their ballot, and they won't vote in the same numbers as if you have a voting location on the reservation or they can vote by mail.

So we have struggled. Going back to the debate of 1890, down the hall in the House of Representatives, the conversation was initiated by Henry Cabot Lodge, and Lodge put forward a voting rights bill that said: You know what, things are going wrong in America, and we need to protect the right to register, the right to vote, and the right to

have those ballots fairly counted. So he basically said that jurisdictions could appeal to the district courts to get Federal supervision on the three critical stages of registering citizens, of conducting the election, and of counting the ballots afterward—those three phases. And it passed in the House of Representatives.

And at that time, it was the Republican Party that backed this fundamental right for all Americans. You know how many Democrats voted for Henry Cabot Lodge's bill? Zero. Zero. Every vote for it came from the Republican Party. That was the Republican Party in 1890.

In 1891, the bill was here in the Senate. Well, what happened in the Senate? Well, a group of Senators said: We don't want the Senate to ever vote on this bill. So they spoke at length, refused to give unanimous consent to get to a final vote.

Now, why do we call that a filibuster? So, at our founding, the whole vision that our Founders laid out was that you hear everyone speak, and then you vote and you take the path the majority favors over the minority.

Now, they really emphasized—this is important—that you shouldn't have a supermajority because they wrote the Constitution while they were under the Confederation Congress. The Confederation Congress had a supermajority. And because of that supermajority, they couldn't get anything done. They couldn't raise the money to take on Shays' Rebellion. The Senate was paralyzed over policymaking.

So the Founders said: Whatever you do, do not have a supermajority because it paralyzes the body, and the body ends up taking the path the minority prefers, who are obstructing a final vote, rather than the majority.

Let's just look at some of the comments that our Founders made. James Madison:

In cases where justice or the general good might require new laws . . . or [new] measures . . . the . . . principle of free government would be reversed.

He is speaking to a supermajority because it would no longer be the majority that would decide; it would be transferred to the minority. And he went on to say the damage that would be done if that happened: The basic principle of free government would be assaulted if the minority makes the decision instead of the majority.

What possible logic could there be to say the path that most people think is the wrong path is the path we will take? That is what happens when the supermajority blocks a final simple majority vote.

And we have Hamilton. Of course, Hamilton gets a lot of attention with the play done on Hamilton and his general supersized role in the early stage of our Republic.

Again, Hamilton was very aware of how the Confederation Congress was polarized before we got our Constitution in 1787. He, again, refers to the

supermajority: It would be, in practice, as if you need everybody; and the history of any establishment that takes this principle is the result of impotence, perplexity, and disorder. He is referring to the supermajority requirement of the Confederation Congress.

What else did he say? Well, Hamilton said—and he uses some language we don't really use today: "If a pertinacious minority can control the majority . . . tedious delays; continual negotiation and intrigue; contemptible compromises of the public good."

I sometimes think that sounds like a description of the Senate today—tedious delays, intrigue, contemptible compromises of the public good. The public good is compromised when the Senate is not able to debate issues that face the United States of America.

He went on to say: "The supermajority's real operation is to embarrass the administration, to destroy the energy of the government."

"Destroy the energy of the government"? Doesn't that ring somewhat true of what we have gone through in trying to get to a vote on Build Back Better over this last year, any components of it, and trying to get a vote to protect our fundamental right and freedom to vote? And it has gone on all year. We are a year into the administration now.

So in modern times, we now are facing, again, what was faced in 1890. And I didn't really tell you the outcome of that 1890 debate. The House passed it. All Republicans came over here, and a number of Senators said: We are not going to give consent to get to a final vote.

They broke the contract—the social contract that you listen to everybody, and then, having heard all the ideas, having had a debate that maybe stretched many, many days or maybe weeks, you vote.

So the newspapers started to call this tactic, way back in the mid-1800s—they called this tactic—"piracy," because the core principle was being violated by people taking over the Senate—pirates taking over the Senate. And the common term for pirates, "freebooters"—freebooters, that is where "filibuster" comes from. It is a corruption of the term "freebooter."

The pirates are taking over. They are breaking the deal of America. They are breaking the design of the Senate. It is supposed to be that after you listen to everyone—everyone has made their points—you vote by simple majority.

Now, we have had a particular development over the last three decades in which the Senate has become more and more dysfunctional. I had the chance to see this evolve because I first came here as an intern in 1976. And up in the staff Gallery, I would go up and watch each amendment being debated.

And there was no television. So Senators couldn't see what was going on. Staff back in the offices couldn't see what was going on. There was no cell phone. There was no fax machine. And

so each Senator had a staff member watching the debate. And then when the vote came, you would rush down to those elevators that are outside that door. And when the Senators came up from the subway train that comes over from the office buildings, you would meet your Senator, and you would describe the debate that had happened. And if it was your particular topic area, you would describe what people back home were saying or what you had understood was the key question. And then the Senator would come in and vote.

And then, when the vote was tallied, there would be 6 or 12 Senators, generally clustered here, and they would all say "Mr. President," because whomever got called on first got the next amendment. There was no set of amendments lined up on the Tax Reform Act of 1976, which is what I was staffing for Senator Hatfield.

I was very intrigued by the functioning of our government. So I went back to college and then dropped out 3 months later to come back here for the start of the Carter administration to watch what was going on in our government with a new Presidency. I waited tables. I volunteered for nonprofits. I went door to door for the Virginia Consumer Congress, working on issues related to renewable energy or energy efficiency. But I watched the Senate, and what I saw was a Senate that could debate issues in that year of 1977.

Then I came back here after graduate school, and I was planning to go overseas to work on issues of economic development in very poor countries—fundamental issues of healthcare, fundamental issues of education. But I was offered an opportunity to work on something here in DC as a Presidential fellow, to work on the issue of "How do you decrease the threat of blowing up the world with nuclear weapons?"

So I went to work for the Secretary of Defense, Caspar Weinberger, under President Reagan. Then I went to work for the Congressional Budget Office, after 2 years of working for President Reagan and Caspar Weinberger. The Congressional Budget Office works for Congress, and I did studies and did briefings here on the Hill, watching the Senate. And the Senate started to have troubles, but it was still pretty functional.

Nothing prepared me for arriving here as a U.S. Senator in 2009, January, and seeing the utter decay and dysfunction of my beloved Senate—your beloved Senate, the Senate once called the greatest deliberative body in the world.

So I started to have conversations with colleagues about what had happened, and I saw that we had cloture motions—that is a motion to close debate—one after the other after the other and very few amendments.

Now, on the amendment side, this is a chart that shows the decline in amendments from the 109th Congress to the 116th. The 116th Congress is the

one that just ended. There is a tenfold reduction in the number of amendments over those 14 years—a tenfold reduction in amendments, a steady line downwards.

Well, that is one symptom of the problem, but then there was another piece of this problem, which was more and more motions to close debate. And those motions are designed to be rare. So they take—after you make the motion—a day plus. You have to have an intervening day, and then the second day after you make the motion, you can hold a vote on closing debate, because it is supposed to be such a rare moment, once or twice a year.

Then, if you succeed in getting the votes to close debate, it is 30 hours of debate. Well, that takes 2 or 3 days to get 30 hours of debate in and then an extra hour for any Senator who didn't have the chance to speak. So there is that factor. And then, finally, you can get to the final vote.

Those cloture motions eat up entire weeks. So you come in, and, on Monday, you file a motion to close debate. On Wednesday, you vote on actually closing debate because you have to have that intervening day of Tuesday. Then you have 30 hours, which takes the time up of the normal day of Wednesday and Thursday, and maybe on Friday you get to vote.

That is what I am saying: Every cloture motion takes up a week. Well, the Senate is normally only here 30 to 40 weeks a year. So if you have 30 or 40 cloture motions, you have essentially taken up all the Senate's time. But the Senate has an incredibly complex, extensive agenda. It needs to address so many issues in healthcare and housing and education, good-paying jobs, the environment. How do you take on climate? How do you take on international trade? How do you take on human rights in foreign countries like China, which are conducting genocide? So many issues around the world, plus it has so many nominations that have to be addressed.

I am told—I haven't double-checked this yet—that there were four Cabinet positions that required confirmation in the first Congress—four. Then you had Ambassadors, and you had judges. But you had a pretty small number of nominations in those positions. Now, we have well over a thousand positions—well over a thousand—and we have a nomination process in which people are nominated to have a higher rank in the military or advancement to certain ranks in the civil service. And so you have extensive lists that need to go through as well.

So let's take a look at what happened with the growth of cloture motions. This is the history going back to 1910. We actually only had cloture starting in 1917. And, in 1917, you see that there were very few cloture motions in a decade—3 in a decade, 10 in a decade, 5 in a decade, 8 in a decade, 3 in a decade—less than 1 per year.

Well, that intervening day kind of made sense because they were less than

one time per year. It was supposed to be a rare moment in which you would address the fact that some Senators were not going to let the Senate proceed as our Founders envisioned, which was, after hearing everybody, to conduct a vote.

Then you start to see in the 1970s a big change. I think we have a chart that shows it year by year. We don't. Well, this will give you some sense of it. So we have—divided by 10, since these are by decade—we had growth in the 1980s to more than 20 per year; a growth in the 1990s to more than—well, an average of 35 to 36 a year. In the 2000s, an average of 45 per year. In the 2010 decade, an average of over 100 per year, taking up an entire week of the Senate's time.

So how did this unfold? Well, let's think a little bit about the fact that that filibuster that occurred in 1891 was about blocking Black Americans from having power—the power to vote—because if you have the power to vote, you have the power to weigh in. That means you have a lot of power in our society. So there was a deep determination to keep Black Americans from voting.

That was the filibuster of 1891. And its failure in the Senate—remember, it passed by a majority in the House, and it had majority support in the Senate, but the filibuster was used to crush this.

Now, that process meant that, from 1891 through 1965, when we passed voting rights in this Chamber, the filibuster was used for one thing: crushing the political rights of Black Americans.

Now, someone will say: Well, that is not quite right. There was an episode in 1917 in which the issue wasn't civil rights or voting rights. The issue was whether to arm our commercial ships against potential attacks by the Germans.

And that is partly true.

In March of that year, 1917, we weren't yet in the war, World War I. And there was a group of Senators who said: If we arm these ships and they deployed depth charges against German submarines or so forth, we are going to be in the war, and we will not have had a declaration of war. We will be pulled into the war by essentially this process of arming ships.

So they spoke at length during the last week of Congress, and time ran out, and the bill died. And the next week, the new Congress started. This is back when the transition happened in March. And the new Congress immediately said: We can close debate with 67 votes or two-thirds of the Senate. Actually, it was two-thirds; we didn't have 100 Senators here—two-thirds of the Senate, showing up to vote and close debate. So that was the first time that we had a motion to close debate since 1805.

And the reason I say it is since 1805, is that our original rules had a motion called the previous question. And on

the previous question, there is a little bit of uncertainty of exactly how it was used. It sometimes said that, basically, you got to speed things up so we can get to the final vote. Other times, it has been interpreted as “No, the previous question means we vote; we vote on the question before us.” But it was never actually used, and it wasn't used because there was a social contract.

The Senate said: We can listen to everybody, and, then, having heard everybody, we can vote.

Fair enough. Fair deal. Square deal.

So in 1805, when Aaron Burr was in charge of rewriting the rule book, he said: We don't use this rule. We don't need this rule. We have a social contract. We listen to everybody and then have a simple majority vote, as our Founders designed the Senate. No need.

So we hadn't had a rule that essentially enabled this body to come to a vote in that period from 1805 through 1917. So it is true that the bill was delayed for 1 week. But the new Congress immediately came in, created a new rule to close debate, closed debate on that bill, and passed a bill to arm ships. So the only real thing that was crushed in those years from 1891 through 1965 was voting rights for Black Americans because the idea that you would prevent a simple majority vote, as our Founders intended, was piracy.

Well, in 1965, we passed voting rights, and the national consensus was we are putting that behind us; we are putting the discrimination behind us; we are putting the manipulation on election day behind us. We are going to have a fair opportunity for everybody to vote in this country. So the filibuster lost some of its taint because it was no longer primarily an instrument to crush the political rights of Black Americans.

People started saying: You know, maybe I can use this on something other than civil rights or something other than voting rights.

By the way, it had been used almost entirely on final passage of bills.

Maybe I can use it on nominations, to prevent nominations from going through expeditiously. Maybe I can use it on amendments. Maybe I can use it on motions to proceed.

Let's take a look at the issue of amendments. Prior to the sixties, one time, there had been a cloture motion on an amendment.

You know that vision that I saw in 1976 where one amendment was debated, and then when it was done, there were no pending amendments, so the next person would say: “Wait”—they would always say “Mr. President” because there was always a man in the Chair at that point; I am now glad to say “Madam President”—“Madam President,” and whoever got heard first would put up the next amendment.

Well, that world started to change along the way. People started to obstruct not just final passage but obstruct amendments. There has been

steady growth in that over time. We are now up, in the last decade, to about 14 times per year or 143 times in the decade.

Then we have the question of the motion to proceed. You would think—we have a legislative calendar, and that calendar has a list of bills eligible to consider. Someone says: I want to make a motion—normally the majority leader—to go to a particular item, a particular bill on that calendar. You would think that it would be like “Hey, we are going to go to the election bill. Do I have majority support to do that?” You would have a 15-minute debate and vote. You decide to go to that bill or not.

Why would you take up a lot of the Senate’s precious time debating whether to debate a bill? But that logic has not prevailed, so we have a continuous increase in the attack on the ability to get a bill to the floor. Well, in the sixties, about one per year; in the seventies, about one per year; four times per year in the eighties; more than 10 in the nineties—it escalates.

Here is the thing: To get a bill to the floor, if a group is intent on forcing a cloture motion, you have to have a motion, an intervening day, 30 hours of debate, and then you have to be able to have an additional hour for any Senator who wasn’t able to speak in those 30 hours. In other words, it takes an entire week to decide whether to actually debate a bill. That is absolutely insane.

If you want the U.S. Senate to be unable to address issues, then allow unlimited debate until there is a cloture motion on the motion to proceed. I think most Senators agree that that should go. But here is the problem: Whichever party is in the minority doesn’t want to make things easier for the majority. And this really goes to a core challenge of our highly tribal parties.

In the Senate that I first saw, the philosophies of the two parties—if you were doing a bell curve of each party, they overlapped. They overlapped a lot. There were Republicans who voted more like Democrats and Democrats who voted more like Republicans. There was a lot more, therefore, bipartisan work. Now, if you do those same two bell curves on how people vote, there is a chasm. If you do a bell curve where the Democrats are and a bell curve where the Republicans are, there is a deep valley, a chasm in the middle.

We have become more intensely tribal in ways that are absolutely reinforced by social media, all those commentaries on various Instagrams or a tweet reinforcing the idea that the other side is evil, that the two sides are far apart, which leads the minority in this Chamber to say: Since the other side is evil, we will just prevent them from ever getting to a bill. If 41 of us—and right now, there are 50 desks on this side of the aisle, and there are 50 desks on that side of the aisle—if 41 of us proceed to say we will not vote to close debate on a motion to proceed, you can never get to a bill.

We have had that happen multiple times this year in which my Republican colleagues voted to prevent us from debating voting rights, the protection of voting rights. What a change from 1890, when, in the House of Representatives, every vote cast for the bill to defend the right to vote in America was a Republican vote. Now, every vote against debating the issue has come from the Republicans. What a swap over the time period.

This, essentially, is a strategy to kill bills in the cradle before they are debated on this floor.

Both caucuses, by the way, have done this. When I speak of voting rights, it is now my colleagues across the aisle who are deliberately blocking it from being debated time and again, but on other issues and when the Democrats have been in the minority, we have done the same thing. It needs to end.

You know, I had conversations with a whole group of Republicans last year saying: Next year, we have no idea who will be in the majority. We have no idea. So let’s just have 1 hour at most, evenly divided, to discuss whether a bill comes to the floor, and then we will vote. Instead of an intervening day and 30 hours, plus extra hours if you didn’t get to debate, you have 1 hour evenly divided. If one side yields back its time, that means in 30 minutes, we can then decide to get on the bill or not.

Thirty hours, an intervening day, or 30 minutes. That makes a lot more sense. We have to end this.

I have had this conversation with nine of my colleagues across the aisle and said: Let’s do this. Let’s fix the motion to proceed and guarantee germane amendments on the floor.

They were interested. Some said they would go and take it to their policy team, some said they would take it to their caucus, and some said they would take it to their leadership. Then they all said “Sorry” because their leadership said “No way are we going to have kind of the ordinary Senators who aren’t in leadership have a movement to fix the Senate.”

MITCH MCCONNELL told them: No. We will make changes depending on what is best for our caucus. And if we are in the majority, that is different than if we are in the minority.

So those efforts failed, and people keep saying to me: Hey, wouldn’t it work if you draw up rules and implement them with the next Congress?

Well, we have tried that. My colleague Tom Udall, who is now our Ambassador to New Zealand, was there, coming in with my class in 2009. He had followed this as well. So we teamed up, and we worked on these conversations, but ultimately we couldn’t make it happen.

We need to fix the Senate. We need to guarantee germane amendments. When I say “germane amendments,” I mean amendments that are on the topic.

When I was staffing that tax bill for Senator Hatfield, every amendment

was on taxes. Should we proceed to increase or rein in the tax credit that goes—or the tax deduction that goes to deducting the cost of your home office if you are a teacher in our public schools? It was one I heard in a lot of letters. There were a ton of letters from teachers in Oregon about that.

I remember that another amendment was on employee stock ownership plans, which enable you to be able to enable your workers to own a share of the company. How do we make those ESOPs work better? and so on and so forth, one tax issue after another—nothing to do with highly polarizing social issues on a tax bill because people knew that when another bill came on healthcare, they could put healthcare issues on that. When one came on transportation, they could put their transportation amendments on it.

Now the assumption is, hey, if there is a bill that is going to pass, we better throw in every idea we ever had because that is like the only bill that will get through the Senate. The result is these massively thick bills, which are an insult to democracy because in a 1,000- or a 2,000-page bill, you are talking about thousands of ideas, of new laws, of new ideas being embedded.

There is no way the citizens can hold us accountable when we are voting on a bill that is yea thick. There are a bunch of things that are good. There are a bunch of things that are bad. Plus, we can’t even figure out what some of them are before we have to vote because when the deal is struck off the floor because we can’t do amendments and because there is no debate, well, we are stuck with a big bill being delivered and described to us. That is not the way it should work. That is not good for us. That is not good for the citizens.

Let’s note that what is happening in those 19 States puts us at an absolutely critical moment. You can think of democracy as a flickering flame or a flame that has to be maintained and nurtured from one generation to the next. Now, it is our challenge—our challenge—because laws are being passed on registration, laws are being passed on the process of voting, and laws are being passed on the process of counting that are designed to manipulate the outcome, to basically cheat Americans out of a fair election and, in many cases, cheat them out of the opportunity to vote at all or if they can vote, not have their vote fairly counted. So it is our responsibility to act.

I see my colleague from Massachusetts has come to the floor. I think she is ready to speak.

I just want to sum up with this notion: The failure of this Senate to act in 1891 led to three generations in which civil rights for Black Americans were suppressed in our country. If we fail to act—if we fail to act this year, 2022, and allow the authentic integrity of elections—then we may see three generations in which we lose government of, by, and for the people.

You see, voting rights are the critical component because if those who are elected break the laws or go off track, you throw them out through fair elections, but if they go off track and there are no fair elections, they increase their power.

You have to have fair elections to maintain government of, by, and for the people. That is the reason we must act this week to pass the John Lewis Voting Rights Act and the Freedom to Vote Act that are before this Senate right now.

I yield to my colleague from the great State of Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Ms. WARREN. Madam President, I want to say a very special thank-you to my colleague, the Senator from Oregon. Senator MERKLEY has worked harder and more persistently on questions about the filibuster and the procedures of the U.S. Senate for years now and tried to lead us to a more functional situation than we are in right now. I want to thank him for his leadership.

I know that tonight must be frustrating for him because he has tried so hard to get us to a better place. But I very much appreciate all that he has done, and to the extent we make progress, we make progress in no small part because of his leadership.

Thank you.

H.R. 5746

Ms. WARREN. Madam President, I rise today to urge the Senate to take action to protect voting rights and to defend our democracy. Voting is foundational to our democracy. In a strong, functioning democracy, the playing field is level. Citizens have a right to vote, and neither one side nor the other has the right to block those voters from the ballot box or from getting their votes counted.

That basic premise no longer holds in America. Let's be blunt. American democracy is under attack from Republican politicians. In the past year alone, Republican State legislatures have passed laws in nearly 20 States to restrict American citizens' right to vote.

The Republican nominees to the Supreme Court have destroyed longstanding protections against dark money in politics; they have given the green light to partisan gerrymandering; and they have gutted the Voting Rights Act. Republican dark money networks are bankrolling voter suppression efforts with hundreds of millions of dollars in lobbying and advertising.

And for years and years, Republican Donald Trump and Republican politicians have spread lies about the integrity of our elections. Last January 6, a Republican President, backed up by Republicans right here in this Senate, provoked a deadly insurrection at our Nation's Capitol.

And in the intervening year, Republican leaders have refused to accept evidence of President Biden's 7 million-vote victory over Donald Trump. Instead, they have fed conspiracies and lies that further undermine our democracy.

Yes, American democracy is under attack, and, today, 50 Democratic Senators agree on the right response to this attack. The Freedom to Vote Act would guarantee that every American citizen can easily vote and get their vote counted.

The act would defend against attempts to overturn the will of the people; the act would reform our broken campaign finance system and help root out dark money; and, critically important, the act would ban partisan gerrymandering by either side.

The companion bill, the John Lewis Voting Rights Advancement Act, would restore historic protections against State laws that have the purpose and the effect of discriminating on the basis of race.

Unfortunately, Senate Republicans would rather destroy our democracy than have free and fair elections, and so they support those around the country who are trying to block access to voting and who are trying to rig how votes get counted.

Elections are about the will of the majority, but the Republicans in the Senate don't want what a majority of Americans want. In fact, the 50 Republicans in the Senate, together, represent 41½ million fewer Americans than the Democratic majority, but instead of taking a simple vote to protect American citizens' access to the polls, they want to stop legislation to defend the very foundation of our democracy from even getting a vote on the floor of the Senate.

Let me be clear. My view on this is that the filibuster has no place in our democracy. Our Founders believed deeply in protections for the minority, and those are enshrined in the Constitution and in the structure of Congress. But our Founders made it clear that, after extended debate, the majority could always get a vote. And that final vote—except in the case of treaties and impeachment—would always be by simple majority. The Founders did not add a filibuster. With two exceptions, they insisted on plain old majority rule.

When the Senate changed its rules a decade later, the filibuster became the favored tool of racists and segregationists. The filibuster preserved Jim Crow laws and stalled civil rights legislation for decades. The filibuster helped block the passage of anti-lynching legislation for over 100 years. The filibuster nearly stopped Congress from passing the most important voting rights law in our Nation's history—the Voting Rights Act of 1965.

Today's filibuster does not foster bipartisanship and compromise. In fact, the exact opposite is true. The filibuster has been weaponized to intensify partisan division.

The filibuster is a wicked tool used to kill legislation supported by the majority of Americans of all political parties, and that is true for protecting the right to vote and gun safety legislation and immigration reform and codifying *Roe v. Wade*.

The filibuster thwarts the will of the people. Today's filibuster doesn't encourage debate; it promotes power. Senators can torpedo bills without saying a single word in public or even stepping to the floor of the U.S. Senate. This is not how a so-called deliberative body should operate.

Senators should be required to talk and vote instead of hiding behind a rule. They should have to put skin in the game. If Republicans are fine with the wave of anti-voter laws being enacted in State after State, then they should have to come to the floor and make that clear. If Republicans oppose reinstating the Voting Rights Act that passed in this Chamber unanimously in 2006, their constituents and the historical record should know exactly where they stand.

Instead, because of how today's filibuster works, we have two sets of rules in our country, one for Democrats, who want to promote civil rights and liberties, and another set for Republicans, who want to take them away. Republicans who want to close polling places, who want to limit voting, who want to pass gerrymandered maps are hard at work doing that right now with simple majorities in State legislatures all across this country. They face no filibusters to stop them. It is majority rule all the way.

And here in Washington, when Republicans want to pass massive tax cuts for billionaires and rig our Tax Code to favor big businesses, an exception to the filibuster lets them do just that with a simple majority.

Republicans who want to pack the Supreme Court with extremists Justices who roll back fundamental rights and who disregard the rule of law can do that with a simple majority right here in the U.S. Senate. But a majority of Democratic Senators—again, Democrats who, together, represent over 40 million more Americans than the Republican Senators—a majority of Democrats cannot pass legislation to improve the lives of Americans.

Democrats want to raise the minimum wage; Democrats want to lower the cost of prescription drugs and healthcare; and Democrats want to protect the right to vote. But too often we cannot achieve these goals because the filibuster gives the minority party an almost total veto over legislation, including the legislation we need to save our American democracy.

We can't ignore Republicans' attempts to rig free and fair elections in this country. We can't roll over when Republicans want to make it harder for Black Americans to vote. We can't look the other way when Republicans want to make it tough for Latinos and Asian Americans to vote.