I see my great colleague Senator STABENOW from the State of Michigan is here.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, I am so pleased to be here today. I appreciate the words of the great Senator from Minnesota. I am very pleased to rise with colleagues on both sides of the aisle to pay tribute to somebody who is much more than a colleague—someone who is also a mentor and a great friend, the Senator from Maryland, BARBARA MIKULSKI.

Today, as we all know, she became the longest serving woman Member of the Senate in the history of our Nation. I have a 3-year-old granddaughter Lilly who will be able to read now in the history books about not only her grandmother but the woman who holds this record, Senator BARBARA MIKULSKI, and all she has done and all she means to each of us, particularly as a role model for my granddaughter and other young children, other young women who will be coming after all of us.

She is here today because she is bold and fearless and determined, as we all know. In 1986, when she first ran for the Senate, she looked for inspiration from her own great-grandmother who came to the United States from Poland with no money and no job. But her great-grandmother knew the importance of hard work and she built a life for her family here, a new beginning, and in so doing opened the door for future generations. I know today she is looking down from a special place with tremendous pride.

When Senator MIKULSKI won that election, becoming the first Democratic woman to win a Senate seat in her own right, she carried on her great-grandmother's legacy—opening doors for future generations of women to follow in her footsteps. Thanks to that, there are more women serving in the Senate today than have ever served in the entire history of our great country. When Senator MIKULSKI was elected in 1986, from the moment she arrived in this august body, she has been a tireless champion of working families in Maryland and across the country. I am proud to have partnered with her on so many important efforts to make sure we are building things in America again and supporting the people who have built the great middle class of this country by their hard work.

She grew up working in her parents' grocery store and understands the struggles of working families who want nothing more than to create a better life for their children and their grandchildren.

She got her start in politics fighting to save the Fells Point neighborhood in Baltimore, stopping a proposed highway that would have divided a neighborhood and destroyed that community. Today, because of Senator MIKULSKI, Fells Point is a thriving residential and commercial community. She has continued from that day, every day, fighting for neighborhoods and families and standing for the men and women who work hard every day to make a better life for themselves and their families.

When BARBARA first arrived in the Senate, she was one of only two women Senators, as we know. Before then, women were appointed to the worst committees, were locked out of the ''old boys' club'' and didn't have much of a voice. But she changed all that.

She got appointed to the powerful Appropriations Committee—the first Democratic woman to do so, giving the women of America a voice, for the first time, on how we set our priorities for the investments of our country. More importantly, she learned how to build coalitions, to work with colleagues on both sides of the aisle, and get things done for the people who sent her here to work for them.

Today, as dean of the women Senators, BARBARA continues that leadership. Thanks to her, the women of the Senate get together—both Democrats and Republicans—for fellowship and friendship on a regular basis. Now, following in her footsteps, there are woman Members on every single committee in the Senate. That is important to the operation of our country's business.

Her example shows us all the importance of hard work, determination, and courage.

I congratulate my friend, Senator BARBARA MIKULSKI, today on her great accomplishment and, most importantly, on a distinguished record of public service on behalf of the people of Maryland and our country. I thank her for all she has done for me personally and for all the other women in the Senate—the ones who have already followed in her footsteps and the many who are still to come.

This is an exciting day for the history books—as some of us like to say, it is another step in ''herstory''—BARBARA's story—which is a special one for our country.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MANCHIN). Without objection, it is so ordered.

Mr. HARKIN. Mr. President, parliamentary inquiry: Under the unanimous consent agreement, there was a period of 30 minutes for tributes to Senator MIKULSKI. Is there any of that time remaining?

The PRESIDING OFFICER. Time has been consumed.

Mr. HARKIN. If I am not mistaken, under the unanimous consent agreement, I was deemed to have 45 minutes.

The PRESIDING OFFICER. That is correct.

FILIBUSTER RULE

Mr. HARKIN. Mr. President, I have a resolution for myself, Senator DURBIN, Senator MIKULSKI, and Senator SHAHEEN, which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 8) amending the Standing Rules of the Senate to provide for cloture to be invoked with less than three-fifths majority after additional debate.

The PRESIDING OFFICER. Is there objection?

Mr. ALEXANDER. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I had a good discussion with the Senator from Iowa. This is a longstanding proposal of his. He has thoughtfully considered it. Even though I admire him, I do not admire the proposal.

What we would like to do is let the Senator from Iowa make his proposal. I will listen, and when he has made the proposal, I will ask him to yield me a few minutes and we may have a little discussion back and forth on the merits of the proposal. With that in mind, I object.

The PRESIDING OFFICER. Objection having been heard, the resolution will go over under the rules.

Mr. HARKIN. Mr. President, I am sorry my good friend from Tennessee had to object, but I understand. We are going to engage for some time now on the Senate floor in a discussion on the filibuster, something that has been around a long time but which, in the last several years, few years—I would not say ''several''—in the last 20, 30 years, has gotten to the point where it has paralyzed the Senate and has paralyzed the country.

I intend to make some remarks for a while. I appreciate my friend from Tennessee and also my friend from Kansas who is here. I hope we can engage in a nice colloquy and a discussion about this in a back-and-forth way. I look forward to doing that. I do wish to take some time to at least lay out my case, as I did 15 years ago—I am sorry, 16 years ago. On January 4, 1995, I submitted this same resolution. I was a member of the minority party in the Senate for the first time in 8 years. When I first came to the Senate, the Republicans were in charge and then the Democrats got in charge and then the Republicans got in charge and then the Democrats got in charge and then the Republicans got in charge and then the Democrats got in charge. Since I have been here, since 1985, five times the Senate has changed hands.

I note that at the beginning of that Congress in 1995, the Republicans outnumbered Democrats 53 to 47, the same majority-minority ratio that exists today, just on the other side. Even though I was opposed to the then-majority party's agenda, I submitted the

same basic resolution to change the Senate rules regarding the filibuster.

My plan would have ensured ample debate and deliberation. The stated purpose of a filibuster is to have debate and deliberation. But it would also have allowed a bill or nominee to receive a ''yes'' or ''no'' vote. Unfortunately, my proposal did not pass. It received 19 votes. My cosponsors were Senator LIEBERMAN, Senator Pell, and Senator Robb of Virginia.

I submitted my bill—and if you care to go back and read that debate, it is the January 4, 1995, CONGRESSIONAL RECORD in the Senate. I saw an escalating arms race, where each side ratcheted up the use of the filibuster. That is what I called it then.

Sadly, in the intervening years, my prediction has been fulfilled. The sad reality is that today, because of the indiscriminate use of the filibuster, the ability of our government to legislate and to address problems is severely jeopardized. Sixteen years after I first submitted my proposal, it is even more apparent that for our government to properly function, we must reform and curb the use of the filibuster.

The filibuster was once an extraordinary tool used in the rarest of circumstances. When many people think of the filibuster, many times it brings to mind the classic film of ''Mr. Smith Goes to Washington.'' It is ironic that in 1939, the year Frank Capra filmed ''Mr. Smith,'' there were zero filibusters in the Senate. From 1917 across the entire 19th century—for 100 years—there were 23 filibusters in 100 years. Indeed, through 1879, there were only four. From 1917, when the Senate first adopted rules to end the filibuster, until 1969, there were fewer than 50—less than 1 filibuster a year. Unfortunately, since then, the number has skyrocketed.

The current concerns I raise are not new. The problem has become far more serious. In 1982, my good friend and colleague, Senator Dale Bumpers of Arkansas, said this about the filibuster: ''Unless we recognize that things are out of control and procedures have to be changed, we'll never be an effective legislative body again.'' That was 1982.

During the 2 years of that Congress, there were 31 filibusters as measured by the number of cloture motions filed. In 1985, former Senator Thomas Eagleton of Missouri remarked:

> The Senate is now in the state of incipient anarchy. The filibuster, once used, by and large, as an occasional exercise in civil rights matters, has now become a routine frolic in almost all matters. Whereas our rules were devised to guarantee full and free debate, they now guarantee unbridled chaos.

That was 1985, my first year here. But during that Congress there were 40 filibusters.

Again, I wish to refer to the number of filibusters as a visual aid to see what has happened.

As we go back to 88th, 89th, 90th, and on up, we can see the number of filibusters escalating from less than 10 a year—4 or 5—up to almost 140, 139. In 1994, former Republican Senator Charles Mathias of Maryland said:

> Today, filibusters are far less visible but far more frequent. The filibuster has become an epidemic,—

An epidemic. That is former Republican Senator Charles Mathias—

> used whenever a coalition can find 41 votes to oppose legislation. The distinction between voting against legislation and blocking a vote between opposing and obstructing has nearly disappeared.

That was Senator Mathias of Maryland.

During that Congress, again right before I first submitted legislation to modify the filibuster, there were 80 filibusters that year. If I may quote myself, 1 year after Senator Mathias made his statement about the filibuster, this is what I said in 1995:

> It is used, Mr. President, as blackmail, for one Senator to get his or her way on something they could not rightfully win through the normal process. I am not accusing any one party of this. It happens on both sides of the aisle.

I said that in 1995. Quoting myself from the RECORD:

> Mr. President, I believe each Senator needs to give up a little of our pride, a little of our prerogatives, and a little of our power for the good of this Senate and the good of this country. I think the voters of this country were turned off by the constant bickering, the arguing back and forth that goes on in this Senate Chamber, the gridlock that ensued here, the pointing of fingers of blame. Sometimes in the fog of debate, like the fog of war, it is hard to determine who is responsible for slowing something down. It is like shifting sand. People hide behind the filibuster. I think it is time to let the voters know that we have heard their message in the last election.

I said this in 1995.

They did not send us here to bicker and to argue and to point fingers. They want us to get things done to address the concerns facing this country. They want us to reform this place. They want this place to operate a little better, a little more openly, and a little more decisively.

I said that when the Republicans were in charge.

With all those filibusters, it was not until the 110th and 111th Congress that the true scope of the filibuster abuse would truly be realized. In the 110th Congress, there were an astonishing 139 motions to end filibusters. In the 111th, there were 136—275 filibusters in just 4 years.

The fact is, in successive Congresses, Democrats and Republicans have made the filibuster an everyday weapon of obstruction, not as a way to ensure debate and deliberation but as a way of obstruction. I say both sides have done it. I said that in 1995. I predicted an escalating arms race. I said: If we do not do something about it, it is going to get worse—and, unfortunately, it has.

On almost a daily basis, one Senator is able to use just the threat of a filibuster to stop bills from coming to the floor for debate and amendment. In the past Congress, we started seeing the minority filibuster bills they did not even object to solely in order to slow down unrelated measures they did oppose. The result is a legislative process that is simply overwhelmed, squeezing out the ability to do important, relatively noncontroversial legislation.

It is no accident that Norm Ornstein, the esteemed congressional scholar, wrote an article, titled ''Our Broken Senate,'' in which he wrote that ''the expanded use of formal rules on Capitol Hill is unprecedented and is bringing the government to its knees.''

Just the other day, I received a petition signed by nearly 300 top historians, legal scholars, and political scientists urging Senators ''to restore majority rule to the United States Senate.'' I ask unanimous consent to have this petition printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JANUARY 4, 2011.

''We, the undersigned, American historians, political scientists, and legal scholars, call upon our senators to restore majority rule to the United States Senate by revising the rules that now require the concurrence of 60 members before legislation can be brought to the floor for debate and restoring majority vote for the passage of bills.

Joyce Appleby, UCLA, retired; Katy Harriger, Wake Forest University; Senator Gary Hart, University of Colorado, Denver; Sanford Levinson, University of Texas Law School; Lawrence Lessig, Harvard Law School; Peter Onuf, University of Virginia; Jack Rakove, Stanford University; David RePass, University of Connecticut, retired; John K. White, Catholic University; Richard D. Lamm, Gov. of Colorado, 1975–1987; Coit D. Blacker, Stanford University; James Gelvin, UCLA; H. Robert Baker, Georgia State University; Darryl Holter, University of Southern California; Robert Rapetto, Yale University; David Orr, Oberlin College; Manuel J.R. Montoya, University of New Mexico; Kathleen M. Beatty, University of Colorado, Denver; Morton T. Tenzer, University of Connecticut; David S. Tannenhaus, University of Nevada, Las Vegas.

Robert H. Abzug, University of Texas, Austin; David H. Hall, Harvard University; Carrie Menkel-Meadow, Georgetown Law School, University of California, Irvine; Carla Gardina Pestana, Miami University, Ohio; Michael Zucker, University of Notre Dame; Thomas A. Foster, De Paul University; John Kukla, Richmond, Virginia; Corey Robin, Brooklyn College and City University of New York Graduate Center; David Thelen, University of Indiana; T.H. Breen, Northwestern University; Jonathan D. Varat, UCLA Law School; Michael Koppedge, University of Notre Dame; Michael Johnson, Johns Hopkins University; Toby L. Ditz, Johns Hopkins University; Teofilo Ruiz, UCLA; Laurel Ulrich, Harvard University; Pauline Maier, Massachusetts Institute of Technology; Anne Lombard, California State University, San Marcos; Gabrielle M. Spiegel, Johns Hopkins University.

Robert A. Hill, UCLA; Buie Seawell, University of Denver; Edward Countryman, Southern Methodist University; Sara Berry, Johns Hopkins University; Thomas Bender, New York University; David Hollinger, University of California, Berkeley; Franklin W. Knight, Johns Hopkins University; Lucia Stanton, Monticello; Alan Trachtenberg, Yale University; Warren M. Billings, University of New Orleans; James Drake, Metropolitan State College of Denver; M. Gregory

Kendrick, UCLA; Benjamin H. Johnson, Southern Methodist University; Kenneth Karst, UCLA Law School; Robert Johnson, University of Illinois, Chicago; Thomas S. Hines, UCLA; Herbert Sloan, Barnard College, Columbia University; Alexis McCrossen, Southern Methodist University; Ira Berlin, University of Maryland; Fred G. Notehelfer, UCLA, emeritus.

Gerald L. Weinberg, University of North Carolina; Richard M. Pious, Barnard College, Columbia University; Thomas J. Knock, Southern Methodist University; Michelle Nickerson, University of Texas, Dallas; John Chavez, Southern Methodist University; Gabriel Piterberg, UCLA; John P. Kaminski, University of Wisconsin, Madison; Graham A. Peck, Saint Xavier University; Jonathan Gross, De Paul University; Jean R. Sunderland, Lehigh University; Dennis D. Cornell, Southern Methodist University; James M. Banner, Washington DC; David D. Leon, Howard University; Jeremy Adams, Southern Methodist University; Fred M. Woodward, Lawrence, Kansas; Hal S. Barron, Harvey Mudd College; Glenna Mathews, independent scholar; Carol Karsen, University of Michigan; David DuFault, San Diego State University, retired; Jess Stoddard, San Diego State University, retired.

Philip Flemion, San Diego State University, retired; Gregg Herken, University of California, Merced; Karl Inderfurth, Center for Strategic and International Studies; Natalie Zemon Davis, Princeton University, emeritus; Edward A. Alpers, UCLA; John Snetsinger, California Polytechnic State University, San Luis Obispo; Kenneth T. Jackson, Columbia University; Margaret Jacob, UCLA; Simone Weil David, University of Toronto; Margaret Hunt, Amherst College; Charles Capper, Boston University; Ellen Carol DuBois, UCLA; Olivier Zunz, University of Virginia; John R. Chavez, Southern Methodist University; Joanne Ferraro, San Diego State University; Mary F. Corey, UCLA; Joseph Kett, University of Virginia; Ralph E. Luker, Morehouse College, retired; Gregory L. Kaster, Gustavus Adolphus College.

Michael Kazin, Georgetown University; Jeremy Young, Indiana University; James Brewer Stewart, Macalestar College; Mary Beth Norton, Cornell University; Steven Conn, Ohio State University; John Carson, University of Michigan; Ruth Perry, Massachusetts Institute of Technology; Akhil Reed Amar, Yale Law School; Peter Reill, UCLA; Robert E. Bieder, Indiana University; Robert E. Mutch, Washington, D.C.; Edwin G. Burrows, Brooklyn College; Jeffrey K. Tulis, University of Texas, Austin; Fredrika J. Teute, Omohundre Institute of Early American History and Culture; Francis H. Stites, San Diego State University; Albert O'Brien, San Diego State University; John H. Coatsworth, Columbia University; Jack M. Balkin, Yale Law School; Christopher Bates, California Polytechnic State University, Pomona.

Iryne Black, Newport Beach, California; Timothy Black, Newport Beach, California; Walter LaFeber, Cornell University; Maeva Marcus, George Washington University Law School; Isaac Kramnick, Cornell University; Michael Meranze, UCLA; Ross Frank, University of California, San Diego; Ron Hayduk, Queens College; Lucas A. Powe, Jr., University Texas Law School; Paul Finkelman, Albany Law School; Stanley N. Katz, Princeton University; Susan Strasser, University of Delaware; Claudrena Harold, University of Virginia; Pauline Maier, Massachusetts Institute of Technology; Jeremy I. Adelman, Princeton University; Ann Heiney, Newport Beach, California; Anthony Grafton, Princeton University; Charles S. Maier, Harvard University; James Kloppenberg, Harvard University; Trace B. Strong, University of California, San Diego.

Jeffrey C. Isaac, Indiana University; Jay Driskell, Hood College; Nancy Fraser, New School for Social Research; Ellen Schrecker, Yeshiva University; Stephen W. Feldman, University of Wyoming; Frances Fox Piven, City University of New York; Alyson M. Cole, Queens College, CUNY Graduate Center; Thomas Dunim, Amherst College; Joshua Freeman, Queens College, CUNY Graduate Center; Hendrik Hartog, Princeton University; Rick Perlstein, Chicago; Thomas Geoghegen, Desprese, Schwartz & Geoghegen; John Majewski, University of California, Santa Barbara; Anne Norton, University of Pennsylvania; Eric Alterman, Brooklyn College, CUNY; Maximillian E. Novak, UCLA, emeritus; Rogers M. Smith, University of Pennsylvania; Andrew Sabl, UCLA; Carol W. Lewis, University of Connecticut.

Kate Wittenstein, Gustavus Adolphus College; Ruth Anne Baumgartner, Fairfield University and Central Connecticut State University; Ronald Walters, Johns Hopkins University; Charles Venator, University of Connecticut; John R. Wallack, Hunter College and CUNY Graduate Center; Herbert Kaufman, formerly Yale University; Ed Edelman, former Los Angeles County Supervisor; Peter Truowitz, University of Texas, Austin; Ruth Bloch, UCLA; Catherine Allgor, University of California, Riverside; David L. Richards, University of Connecticut; Naomi Merzey, Georgetown University Law Center; Philip Green, New School for Social Research; Robert Westman, University of California, San Diego; Nancy Unger, Santa Clara University; Joseph Lowndes, University of Oregon; Michael Holt, University of Virginia; Neil Sapper, Armarillo College, retired; Alan Lessoff, Illinois State University; Peter Kingstron, University of Connecticut.

David Gerber, University of Buffalo, SUNY; Philip Rubio, North Carolina Arts and Technology University; Philip Nord, Indiana University; Aziz Rana, Cornell Law School; John R. Bowman, Queens College and CUNY Graduate Center; Todd Gitlin, Columbia University; Sandra Moats, University of Wisconsin, Parkside; James M. McPherson, Princeton University; Jason Frank, Cornell University; Charles Pastel, San Francisco State University; Jill Lepore, Harvard University; Jane Kamensky, Brandeis University; Alejandro E. Camacho, University of California, Irvine Law School; Donald Kennedy, president emeritus, Stanford University; Paul Seaver, Stanford University; Geoffrey Symcox, UCLA; Leslie E. Gerwin, Princeton University; Richard H. Kohn, University of North Carolina; Michael D. Wilson, Vanguard University of Southern California; Karl Manheim, Loyola Law School.

Berry M. Sax, Department of Defense Administrative Judge retired; David Montgomery, Yale University; Michael Holt, University of Virginia; Lisa Jacobson, University of California, Santa Barbara; Walter Giger, Jr., University of Hartford; Julie Novkov, University of Albany, SUNY; Denis Z. Davidson; Adolph Grundman, Metropolitan State College of Denver; Brian Balogh, University of Virginia; John A. Mears, Southern Methodist University; Bennett Ramberg, Los Angeles; Shanti Singham, Williams College; Steve Hochstadt, Illinois College; Charles Tandy, Ria University Institute for Advanced Study; Nancy F. Cotton, Harvard University; Jon Butler, Yale University; Eric Thomas, Jacksonville University; Elaine Tyler May, University of Minnesota; Jonathan McLeod, San Diego Mesa Community College; Thomas Zoumaras, Truman State University.

Michelle Mart, Pennsylvania State University, Berks; Mitch Kachun, Western Michigan State University; Bill Chafe, Duke University; Walter Nugent, University of Notre Dame; Lizabeth Cohen, Harvard University; Judith Smith, University of Massachusetts, Boston; Gary Gerstle, Vanderbilt University; Elizabethy Cohgen, Syracuse University; Allen W. Trelease, University of North Carolina, Greensboro; Tera W. Hunter, Princeton University; James H. Merrell, Vassar College; Peter Novick, University of Chicago; Craig Steven Wilder, Massachusetts Institute of Technology; Seth L. Schein, University of California, Davis; Jenna Gibbs, Florida International University; Michael Latham, Fordham University; Michael Green, College of Southern Nevada; Martin Kaplan, University of Southern California; Valerie Matsumoto, UCLA; Sanford M. Jacoby, UCLA.

Alexander Saxton, UCLA emeritus; Thomas J. Sugrue, University of Pennsylvania; Thomas S. Hines, UCLA; Albion M. Urdank, UCLA; James Grossman, University of Chicago; Lynn Hunt, UCLA; Ron Pagnucco, College of St. Benedict, St. John's University; David Konig, Washington University at St. Louis; Brenda Stevenson, UCLA; Linn Shapiro, Washington, DC; Peter Loewenberg, UCLA; Christian McMillen, University of Virginia; Estelle B. Freedman, Stanford University; Daniel Howe, UCLA; Ann C. McGinley, University of Nevada, Las Vegas; Mary La France, University of Nevada, Las Vegas; Christopher Blakesley, University of Nevada, Las Vegas; Thomas B. McAffee, University of Nevada, Las Vegas; Robert Brenner, UCLA; Gail Cline, University of Nevada. Las Vegas; George Rabinowitz, University of North Carolina, Chapel Hill.

Norton Wise, UCLA; Patricia Bonomi, New York University; Jon Wiener, University of California, Irvine; Paul Finkelman, Albany Law School; Joseph Miller, University of Virginia; James MacGregor Burns, Williams College; Susan Dunn, Williams College; Lori Anne Ferrell, Claremont Graduate University; David Warren Sabean, UCLA; Isabel V. Hull, Cornell University; Edward Ayers, Richmond University; Tom Donnelly, Harvard Law School; Donald Kersey, San Jose State University; Peter H. Wood, Duke University; Joseph Scott Miller, Lewis and Clark Law School; Jonathan Lurie, Rutgers University; Maxine N. Lurie, Rutgers University; Elizabeth Fenn, Duke University; Richard Worthington, Pomona College.

Richard Olsen Harvey, Mudd College; Thomas Zoumaras, Truman State University; Anne K. Nelson, American University; Peter Kuznick, American University; Howard M. Wasserman, Florida International University; Diane Mazur, University of Florida Levin College of Law; David K. Robinson, Truman State University; John Wintterle, San Jose State University; William Marotti, UCLA; Peter Brandon Bayer, University of Nevada, Las Vegas; Stephen Aron, UCLA; Ediberto Roman, Florida International State University; Mellisa Stockdale, University of Oklahoma; David W. Levy, University of Oklahoma; Elyssa Faison, University of Oklahoma; Robert Savage, Florida International University Law School; Ronald Steel, University of Southern California, retired; Robert Dawidoff, Claremont Graduate University; Judith S. Lewis, University of Oklahoma.

Steve Raphael, University of California, Berkeley; Robert Garwin, Chula Vista, California; Ann Caylor, Ranchos de Taos, New Mexico; Thomas McClendon, Southwestern University; Kim Lane Scheppele, Princeton University; Ira Chernus, University of Colorado, Boulder; Mark Cammack, Southwestern Law School; Myra Rich, University of Colorado, Denver; Tim Borstelmann, University of Nebraska, Lincoln; Sara Evans, University of Minnesota, retired; Gowri

Ramachandran, Southwestern Law School; Vicki Ruiz, University of California, Irvine; Fay A. Yarbrough, University of Oklahoma; Harry Watson, University of North Carolina, Chapel Hill; Pamela W. Laird, University of Colorado, Denver; Gloria Main, University of Colorado, Boulder, emerita; Thomas R. Clark, California Assembly Judiciary Committee; Joshua Goode, Claremont Graduate University; Marjorie Cohn, Thomas Jefferson Law School.

Mr. HARKIN. Mr. President, last month, our former colleagues, Gary Hart, a Democrat, and Chuck Hagel, a Republican, published an essay in Time magazine calling on us to ''restore democracy to the U.S. Senate'' by reforming the filibuster. In their words, the abuse of the filibuster ''is no way to govern a great democracy.''

I ask unanimous consent to have that essay printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Time, Dec. 21, 2010]

RESTORING DEMOCRACY TO THE U.S. SENATE

(By Chuck Hagel and Gary Hart)

Few principles are as central to democracy and the ideals of the American Republic as majority rule. Though James Madison and his colleagues in The Federalist acknowledged the necessity of protecting the rights of minorities, the course of our nation was to be determined by the will of the majority. No other system consistent with democracy would prove workable.

There is nothing in the United States Constitution that permits a minority to frustrate the will of the majority.

Yet in the early 21st century, the will of the majority of Americans, expressed on a daily basis by our elected representatives in Congress, is consistently thwarted by a minority in the United States Senate. This minority resorts to the Senate rule requiring a three-fifths vote—60 votes—to close (invoke cloture on) debate.

Article One, Section five, of the U.S. Constitution provides that ''Each house [of Congress] may determine the rules of its proceedings. . .'' Based upon Thomas Jefferson's notion that the Senate was to be the saucer in which controversies cooled, Senators have, from the beginning, been at liberty to express their views at such length as they wish. (Jefferson, it should be noted, was the author of the Manual of Parliamentary Procedures for the Use of the Senate of the United States in 1801.) But the Senate has always recognized that even the principle of unlimited speech has its conditions based upon comity and common sense.

Yet today the Senate conducts its business, or not, under the constant threat of a filibuster. Important legislative measures having to do with the vital interests of our nation and the rights of our citizens will not even be introduced if a minority of Senate members refuse to permit them to be considered. Thus, a rule to protect debate is systematically used to prevent debate. Even worse, secret ''holds'' by individual Senators prevent confirmation of federal judges and administration officials.

Though the Senate filibuster rose to prominence during civil rights debates in the 1950s and '60s, it ran its course and the majority prevailed. Today, it is commonplace and a matter of course for such a lock-step minority systematically to prevent consideration of the clear majority will.

The Constitution prevails over congressional rules. Can it be seriously argued that the Senate could adopt a rule that individual Senators could only vote on every other bill or that they could only vote on trade issues, for example, in the fourth year of their term?

Rules of the Senate cannot trump the obvious intention of the Founding Fathers that legislation passed by majorities of both houses, except for the explicit exceptions for ratification of treaties, becomes the law of the land. This is not a partisan question; today the filibuster, real or threatened, dominates virtually every significant issue confronting the Senate and our nation. The law of political payback will ensure that today's Senate majority, once it becomes the minority, will exact its revenge on today's opposition minority party.

Examples of recent abuse of the cloture rule include the 53 to 36 Senate vote to end tax cuts for the wealthy. Regardless, the measure, like so many others (including an earlier attempt to repeal the military's ''Don't Ask, Don't Tell'' policy), failed under the threat of a filibuster. These and other examples are clear violations of the fundamental principle of majority rule.

This is no way to govern a great democracy, not to say also a democracy seeking to democratize other nations.

We believe the abuse of the cloture rule ending debate is a violation of fundamental Constitutional principles. Should a judicial test of this notion occur, it will at the least prove which of the current Supreme Court Justices are, or are not, true ''originalists.'' Resolutions have been introduced in the Senate to alter the cloture rule and permit majority rule, while continuing to protect the rights of individual Senators.

In the interest of the nation and the U.S. Constitution, the Senate must once again become a democratic institution.

Mr. HARKIN. Mr. President, editorialists from across the country have recognized the filibuster must end. The Concord Monitor of New Hampshire called on the Senate to ''Remove the Senate filibuster roadblock,'' noting, ''The filibuster rule has rendered the Senate dysfunctional and harmed the nation's ability to deal with pressing issues.''

The Los Angeles Times said '' . . . both parties should be willing to eliminate such anti-democratic practices as the filibuster. . . .''

Editorials throughout the country have called for reform of the filibuster. I ask unanimous consent to have printed in the RECORD these editorials.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Concord Monitor, Dec. 17, 2010]

REMOVE THE SENATE FILIBUSTER ROADBLOCK

(By Anonymous)

On Jan. 5, 2011, the first day of the first session of the 112th Congress, Iowa Sen. Tom Harkin and other Democrats promise to hold a historic vote to change the Senate's 60-vote cloture rule. The vote to end the filibusters that have made the Senate a place where needed legislation and presidential appointments go to die could be the first of Senator-elect Kelly Ayotte's career. How she votes will be telling.

A super-majority voting requirement makes sense in rare circumstances, ratifying a treaty for example or overriding a presidential veto. But the filibuster rule is not in the Constitution; it's an artifact that may have worked once but has broken and jammed the Senate. When used judiciously, as it was throughout most of its history, the filibuster rule safeguards the rights of the minority. But when abused, as it has been by Senate Republicans who have called for 87 such votes to end debate so far this year, it creates a tyranny of the minority.

There are divisions in both parties on the issue, in part because there are dangers for both parties. Republicans are currently filibustering to stop any and all legislation—and will not vote to end debate until they succeed in winning tax breaks for the nation's wealthiest citizens. Change the filibuster rule—one proposal calls for a simple majority vote—and Republicans will not so easily be able to block legislation supported by the next session's 53-Democrat majority. But if Republicans take the Senate in 2012—and especially if there's also Republican in the White House—Democrats could sorely regret their loss of the ability to filibuster.

When, in his capacity as president of the Senate, Vice President Joe Biden calls for the Senate to write the rules governing the next session, Harkin and others believe that they will have at least 51 votes. Some of them may come from Republicans. The filibuster rule has rendered the Senate dysfunctional and harmed the nation's ability to deal with pressing issues. Ayotte should vote to change the filibuster rule, so the Senate can once again be an effective legislative body worthy of respect.

[From the Los Angeles Times, Dec. 28, 2010]

A NUCLEAR SENATE

The U.S. Senate, once proudly known as the world's greatest deliberative body, has in recent years degenerated into something else: The place where legislation goes to die. It earned that distinction after Democrats won a majority in 2006 and Republicans took unprecedented advantage of long-standing Senate rules allowing the minority to block progress.

There's a good chance Democrats won't hold the majority much longer, however. That's why both parties should be willing to eliminate such anti-democratic practices as the filibuster and the placing of secret holds on legislation. And an opportunity to do so, which only comes along once every two years, is about to arrive.

The filibuster originated in 1806, when the Senate eliminated a rule that had allowed the chamber to end debate by majority vote; in effect, that meant a senator or group of senators could delay progress by simply talking incessantly. But that hardly ever happened in the 19th century. It wasn't until 1917 that the Senate decided to limit these stemwinders by imposing a rule that debate could be ended by a supermajority vote. Since then there have been some other rule changes altering the vote threshold, along with frequent arguments about whether the Senate should go back to its original rule allowing debate to be ended with a simple majority vote. We think it should.

Under the current system, senators don't even have to stand up and speak until they're hoarse in order to filibuster a bill; a party leader just has to refuse to allow a bill to be brought up by unanimous consent, forcing supporters to find 60 votes in favor of a motion to end debate. Southern Democrats were the first to seriously misuse this tactic during the civil rights era, but Republicans have perfected such abuse in the last three years. According to the good-government advocacy group Common Cause, which once defended the filibuster rule but now aims to eliminate it, 8% of major legislation was affected by threatened or actual filibusters in the 1960s, compared with 70% since 2006. The result is gridlock, which will only get worse now that the balance of partisan power is close to even.

Secret holds are another serious problem. They allow senators to anonymously block bills or confirmations of presidential nominees from reaching the floor for an unlimited time span, making naked obstructionism politically safe. It's largely thanks to such holds that more than one in 10 federal judgeships remain vacant and federal departments still lack key staff two years into the Obama administration. Abuse of holds has become endemic in recent years, sometimes allowing a single senator to take the entire chamber hostage by placing holds on important legislation until backers agree to support that senator's pet project.

The Constitution gives each chamber the power to choose the rules governing its procedures at the beginning of the two-year congressional session, slated this year for Jan. 5. So why doesn't the majority simply do away with the filibuster rule, or amend it? Because changing a long-standing rule requires a two-thirds vote, an impossibly high hurdle. Yet that supermajority rule may be invalid, as argued by then-Vice President Richard Nixon in 1957: ''The right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress,'' he wrote. This is the basis of the so-called nuclear option (or as supporters prefer to call it, the ''constitutional option'').

Sen. Tom Udall (D–N.M.) is leading a push to reform the filibuster rules on Jan. 5, a fight joined by assorted good-government groups and labor unions. Last week, all the returning Senate Democrats sent a letter to Majority Leader Harry Reid (D-Nev.) expressing frustration with the filibuster and urging a change to the rules, though they weren't specific about solutions (and it's unlikely many would favor eliminating the filibuster entirely—most seem to support weaker reforms such as a lowering of the 60-vote threshold). In order to change the rules by a simple majority vote, they would also need the backing of Vice President Joe Biden, because as president of the Senate, the vice president has traditionally ruled when constitutional questions about procedures are raised.

Biden hasn't taken a position, and not a single Republican has joined the effort. The apparent partisan split seems odd given that it was Republicans who most recently brought up the nuclear option when they were in the majority in 2005 and Democrats were blocking President Bush's judicial nominees, but a form of amnesia often sets in when a party is in the minority. For conservatives, opposition is all the more shortsighted given that twice as many Democratic-held seats are up for reelection in 2012 as Republican seats.

Partisan fears about losing a cherished power have prevented the Senate from going nuclear for decades, but abuses of the filibuster and anonymous holds have never been so rampant. The resulting dysfunction is a big part of the reason Congress' approval rating has fallen to 13%, the lowest in the history of the Gallup Poll. The chamber has a chance to save itself from itself on Jan. 5, and it should take it.

Mr. HARKIN. Mr. President, 275 filibusters in 4 years is not just a cold statistic; it represents the minority blocking measures that sometimes—not all the time but sometimes—enjoy broad support among the American people. Just in the last Congress, the filibuster was used to kill many bills that enjoyed majority and often bipartisan support. Need I mention the DREAM Act? It had broad bipartisan support and big support among the American people. There was the DISCLOSE Act, which polls showed that over 80 percent of the American people supported. We had a majority vote here for it, but we didn't have a supermajority. So it is no surprise that Americans are fed up and angry with their Federal Government. In too many critical areas, people see a legislature that is simply unable to respond effectively to the most urgent challenges of our time.

Make no mistake, the problem goes beyond the sheer number of filibusters. This once-rare tactic is now used or threatened to be used on virtually every measure and nominee, even those who may enjoy near universal support. In the past Congress, for nearly 8 months, the minority filibustered confirmation of Martha Johnson as Administrator of the General Services Administration—certainly a relatively noncontroversial position. She was ultimately confirmed 96 to 0. So what was that filibuster all about? And for nearly 5 months, the minority filibustered confirmation of Barbara Keenan to the Fourth Circuit Court of Appeals. She was ultimately confirmed 99 to 0.

What was that filibuster all about?

Again, to quote Norm Ornstein:

> The Senate has taken the term ''deliberative'' to a new level, slowing not just contentious legislation but also bills that have overwhelming support.

Secondly, the filibuster has increasingly been used to prevent consideration of bills and nominees. Rather than to serve to ensure the representation of minority views and to foster debate and deliberation, by filibustering motions to proceed, the minority has been allowed to prevent debate and prevent deliberation. The filibuster has been used to defeat bills and nominees without their ever receiving a discussion here on the floor of the Senate. In other words, the Senate, which was formerly renowned as the world's greatest deliberative body, has now become the world's greatest nondeliberative body. We can't even debate important national issues.

That is why I fully support the commonsense proposals to reform the filibuster and restore the Senate to a body in which issues can be fully debated and deliberated. I support eliminating the filibuster on the motion to proceed, and I believe those who are filibustering a bill or a nominee should be required to come to the floor, hold the floor, and make their case to their colleagues and the American people. Senators should not be able to hide behind a curtain of secret holds. The reality is, however, because of the filibuster, the minority has unchecked veto power in this body.

Now, I want to make it clear, when I say ''the minority,'' I am not talking about the Republicans; I am talking about the minority. It may be the Democrats or it may be the Republicans. As I said, five times it has changed since I have been—since 1985. When I say ''the minority,'' I mean the minority; I don't mean a political party.

This is what James Madison noted when rejecting a supermajority requirement to pass legislation:

> . . . it would no longer be the majority that would rule, the power would be transferred to the minority.

Unfortunately, Madison's prediction has come true. We are the only Democratic body that I know of in the world where the minority, not the majority, controls. In today's Senate, American democracy is turned on its head. The minority rules; the majority is blocked. The majority has responsibility and accountability but lacks the power to govern. The minority has power but lacks accountability and responsibility. This means the minority can block bills that would improve the economy, create jobs, and turn around and blame the majority for not fixing the economy. The minority can block popular legislation and then accuse the majority of being ineffective.

I repeat, when I say ''the minority,'' I am not saying Republicans or Democrats; I am saying the minority, whoever it may happen to be. Both parties have abused the filibuster in the past, and both will, absent real reform, abuse the filibuster in the future. Although Republicans are currently in the minority, there is no question that control of this body will change, as it periodically does.

The fact is, reform is urgently needed. That is why I am reintroducing my proposal which would permit a decreasing majority of Senators over a period of days to invoke cloture on a given matter. Under my proposal, a determined minority could slow down any bill. Senators would have ample time to make their arguments and attempt to persuade the public and a majority of their colleagues. This protects the rights of the minority to full and vigorous debate and deliberation, maintaining the hallmark of the Senate. But at the end of ample debate, the majority should be allowed to act. There should be an up-or-down vote on legislation or a nominee. As former Senator Henry Cabot Lodge, a Republican, stated many years ago, ''To vote without debating is perilous, but to debate and never vote is imbecile.''

My plan has another advantage. The fact is that right now, the minority has no incentive to compromise. Not only do they know they have the power to block legislation, but they can go out and campaign on the message that the majority can't get anything done. In contrast, if the minority knows that at the end of a period of time a bill or nominee will be subject to majority vote, they will be more willing to come to the table and negotiate seriously. Likewise, the majority would want to compromise because they want to save time. There is nothing more valuable to the majority party in the Senate than time.

So under my proposal, on the first cloture vote, you would need 60 votes.

If you don't get 60 votes, you would have another vote in 3 days and you would need 57 votes; in 3 more days, 54 votes; 3 more days, 51 votes. So the majority would finally act, but you would chew up almost 2 weeks of time. So on the first vote, let's say 53 Senators voted for cloture. Well, the minority would know that in several days or maybe in a couple weeks' time, 53 Senators will get cloture. The minority then would go to the majority and say: Look, we can drag this out for a couple of weeks, chew up all your time, but we have some things we would like to have considered. The majority—and I say there is nothing more important to the majority than time here—not wanting to spend a couple weeks on a bill, on a cloture or a filibuster, would say: OK, maybe we can make an agreement. We will collapse the timeframe, the minority gets some of the things they want, and the majority is able then to have a vote. So I see my proposal as a means of encouraging compromise. Right now, there is no reason to compromise for the minority.

Again, I am not talking about Republicans or Democrats; I say ''the minority'' because they know they can absolutely block it.

I have changed my resolution since I introduced it in 1995, and I have changed it because Republicans have said and I heard the minority leader say earlier that they have done this because Democrats in the majority—the majority this time—have employed procedural matters to deprive the Republicans of the right to offer amendments. Well, I am very sympathetic to this argument. That is why I included in this resolution a guaranteed right to offer germane amendments to the minority, filed in advance of the cloture vote so everyone would know what was coming. Again, the minority should have the right to offer some amendments that are germane to the bill. No matter who the majority is, both parties are concerned about amendments from the minority. Perhaps you have a bill dealing with housing and someone wants to offer an amendment dealing with abortion. Well, there may be a time and place for that but not on that bill. So that is why I say it should be germane to the bill. If the minority has ideas to improve the bill, strike something from the bill, that would be germane to that bill.

I have heard it said—and I heard it on the radio this morning driving in—that this is something like a power grab by a Democratic Senator reacting to recent elections in which my party lost numerous seats. Well, I want to make clear that the reforms I advocate are not about one party or one agenda gaining an unfair advantage; it is about the Senate as an institution operating more fairly, effectively, and democratically. Again, I wish to point out that I first offered this in 1995 when I was in the minority. So to use the legal term, I come here with clean hands. The truth is, with Republicans controlling the House, any final legislation will need to be bipartisan with or without the filibuster.

So I don't see reform of the filibuster as a Democratic or Republican issue. Indeed, it was former Republican majority leader Senator Frist who, when he nearly shut this body down over the use of filibusters on a handful of judges, said:

> This filibuster is nothing less than a formula for tyranny by the minority.

That was in 2004, Senator Frist, the Republican majority leader at that time.

Well, as I said, one of the problems here was this was done in the middle of a term. See, I think the Senate ought to be able to set its rules at the beginning, on the first legislative day, which we are in now and which will extend for some time. The Senate ought to be able to set its rules at the beginning of a Congress. You can't go changing the rules every month, but you should be able to set the rules at the beginning of a Congress so that you know for 2 years what the rules are that you are operating under.

So it is time for the arms race to end. That is what this is—it is an arms race. I daresay that if we don't do anything about this, if the Republicans take control of the Senate, as they think they will in 2 years, well, Democrats are going to do the same thing to them. Guarantee it. Guarantee it. The Republicans did—what did I say?—136 filibusters—139? Bet your bottom dollar, if we don't change the rules, Democrats will match them. You wait and see.

Well, a lot of people sometimes say: Well, HARKIN, what you are advocating is the Senate would become like the House. I ask my friends and any Senator on either side of the aisle, since when did the Senate become defined by rule XXII, which is the filibuster? Why does that define the Senate? I thought the Senate was defined by the fact that you get two Senators from every State—two Senators from North Dakota, two Senators from California, two Senators from New York, two Senators from Iowa. I thought the Senate was defined by the fact that we have unlimited debate. When a Senator gets the floor, you can't take it away from him. We operate under unanimous consent. The power of one single Senator would remain. But in the Senate, what do we do? We do treaties, we do nominations, we sit in judgment on impeachments. The Senate is not like the House. And just because we don't have the filibuster as we have known it for the last 94 years does not mean the Senate becomes like the House. Eliminating the filibuster will not change the basic nature of the Senate. So I say to those who say the Senate would be like the House if we did away with this filibuster, would they also suggest that the Senate of Henry Clay or Daniel Webster or Lyndon Johnson or Everett Dirksen was the same as the House of Representatives? I don't think so.

The fact is, what was never intended was that a supermajority of 60 votes would be needed to enact virtually any piece of legislation or for any nominee. In fact, the Framers of the Constitution were very clear about where a supermajority is required. There were only five in the original Constitution: ratification of a treaty, override of a veto, votes of impeachment, passage of a constitutional amendment, and expulsion of a Member. If they wanted to have supermajorities, they would have said so. But it is not in the Constitution. The filibuster is not in the Constitution.

The first Senate expressly included a rule permitting the majority to end debate and bring a measure to a vote by moving the previous question. I repeat: The first Senate—the first Senate—had a rule that permitted the majority to end debate. Alexander Hamilton explained that a supermajority requirement would mean a small minority could ''destroy the energy of government.''

Hamilton said that the government would be subject to the ''caprice or artifices of an insignificant, turbulent or corrupt junta.'' Those are Hamilton's words.

Moreover, reform of filibuster rules stands squarely within the tradition of updating Senate rules as needed to foster an effective government that can respond to the challenges of the day. The Senate has adopted rules that forbid the filibuster in certain cases, such as the War Powers Act and the budget. Imagine that. What should be more debatable than the budget? But our rules do not permit a filibuster of the budget. So we passed rules here limiting the filibuster.

Since 1917, we have passed four significant reforms concerning the filibuster. The fact is, as Senator TOM UDALL has powerfully made clear, article I, section 5, clause 2 of the Constitution specifies that ''each House may determine the rules of its proceedings.''

As Senator Robert Byrd, who was opposed to filibuster reform—he and I had a great debate back in 1995 on this—as he emphasized, and he said this—Senator Byrd: ''At any time that 51 Senators are determined to change the rule . . . that rule can be changed.''

I am reading here from what Senator Byrd said. He said at that time:

> The Constitution in article I, section 5 says that each House shall determine the rules of its proceedings. Now we are at the beginning of Congress. This Congress is not obliged to be bound by the dead hand of the past.

''The dead hand.''

I listened to the minority leader when he said we have—the majority has never changed rules except by following those rules. The rules set down by a Congress a long time ago, by a Senate a long time ago, said that in order to change the rules, you need a two-thirds vote of the Senate. I submit that is unconstitutional. I submit that this Congress, this Senate, on this first legislative day, does not have to abide

by that. What if, in some Senate, one party got 90 Senators one time, and they adopted a rule that said that from here on out, you have to have 90 votes in order to change the rules, here are the rules, and they set up rules that pretty much made it impossible for the minority to ever become the majority? Would that be constitutional? I don't think so.

Senator Byrd said we are not obliged to be bound by the dead hand of the past. The first Senate, Senator Byrd said, which met in 1789, approved 19 rules by majority vote. Those rules have been changed from time to time. So the Members of the Senate who met in 1789 and approved that first body of rules did not for one moment think or believe or pretend that all succeeding Senates would be bound by that Senate.

Here is the essence of what Senator Byrd said:

> It is my belief—which has been supported by rulings of Vice Presidents of both parties and by votes of the Senate—in essence upholding the power and right of a majority of the Senate to change the rules of the Senate at the beginning of a new Congress.

I would say Senator Byrd has not been alone in his views or tactics. The constitutional option has been endorsed by three Vice Presidents and three times by the Senate itself. Why was it not used? Because Senators then reached a compromise, and therefore we never had the constitutional option. But that does not mean we cannot use that. The Constitution is very clear. I think three votes of the Senate and three former Vice Presidents have made clear in their rulings that at the beginning of a Congress, we can set the rules.

Chief Justice John Marshall once said:

> Any enduring Constitution must be able to respond to the various crises of human affairs.

I said many times that I don't believe we can be a 21st-century superpower bound by archaic rules of the 19th century. We have to have a responsive government, responding to the challenges of our time.

I am not afraid. I say to my friends on the Republican side, I am not afraid. What the minority leader said—he said that at some time the Republicans might be in charge, and they might want to undo what the Democrats did, and the Democrats better be careful. That was in his op-ed piece in the Post this morning. I am not afraid of democracy. I am not afraid of the votes of the people. If the people vote to put certain conservatives in power, then they ought to have the right to govern. They ought to have the right to respond to the people of this country. The minority—I would be in the minority at that time—I think the minority ought to have the right to be heard, we ought to have the right to debate, we ought to have the right to amend, but we should not have the right to totally obstruct. I am not afraid.

People say that the tea party in the House—they are going to do all this stuff. I am sorry, I am not afraid. The people voted. There ought to be things that happen because people vote a certain way. No wonder so many people are frustrated. They vote, they think things are going to happen, they don't happen, and they say: A pox on both your Houses.

So, yes, I don't know why we should be so afraid of each other. Why should I be afraid that the Republicans are going to institute legislation I don't like? They have in the past, and our country has endured. I would say there are times when the Democrats have passed legislation Republicans did not like and our country has endured. So I just do not like this fear, that we have to be afraid that somehow the majority is going to do things.

What we want to make sure of is that the rights of the minority are guaranteed—the right to be heard, the right of the minority to offer amendments. But I don't think it ought to be the right of the minority to obstruct, and I don't think it ought to be the right of the minority to demand that their views be implemented. That is the right of the majority.

I close where I began, and I thank my friends for this indulgence. I believe the bedrock of the principle of our Constitution, our Founders, was majority rule with respect for minority rights. But I say this, and I have said it many times. It is kind of the dirty little secret of the Senate. And here is the dirty little secret: The power of an individual Senator comes not by what he can do but by what he can stop. That is the dirty little secret of the Senate. One Senator can stop something, can block it. I say that each Senator—each of us needs to give up a little of our privilege, give up a little of our power, give up a little of our prerogatives for the greater good of this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. I thank the Senator from Iowa for his consistency over the years with his proposal. I wonder if I can make a few remarks on his proposal, and if he has time, if he is still here, maybe I will pose a question to him. I see the Senator from Kansas is also here. He spent a lot of time on the Rules Committee on this subject. He is one of our most forceful speakers on the matter, and I would defer to him, and then I know there are other Senators—the Senator from Oregon, the Senator from New Mexico—who have some proposals to offer. There may be other Senators on the Republican side who come to the floor.

First, I ask unanimous consent to have printed in the RECORD an address I made yesterday at the Heritage Foundation entitled ''The Filibuster: Democracy's finest show . . . the right to talk your head off.''

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

(See exhibit 1.)

Mr. ALEXANDER. I borrowed those words from H.V. Kaltenborn and ''Mr. Smith Goes to Washington.''

I am a little amused by the suggestion the Senator from Iowa made and others made that somehow the Senate has been paralyzed for the last couple of years. Most of the people I know are concerned about what the Senate did do, not what it did not do. It is hard to say you are paralyzed when you pass a $1 trillion stimulus bill, health care law, financial regulation law, et cetera, et cetera.

As far as the claim that Republicans are holding things up goes, I have a few comments. We did not have a budget last year. Most households have to have budgets. The Senate ought to have one. Why didn't we have a budget? It wasn't the Republicans holding it up. As the Senator from Iowa said, under our rules, it only takes 51 votes to pass a budget. During the last couple of years, the Democrats had 59 or 60 votes. So the reason we did not have a budget is because the Democrats did not want to pass a budget, or at least that they did not pass a budget. It had nothing to do with the Senate being ''broken.''

The Senator from Iowa made this Rules proposal in 1995. He has made some modifications in his proposal but basically this is the same as he offered in 1995. I remember those days pretty well. It was right after the so-called Gingrich revolution, in 1994. Republicans took control of the Senate and of the House of Representatives. The Senator from Iowa made his proposal to diminish the effectiveness of a filibuster. What did the Republicans do? The Republicans, had the most to gain—at least temporarily—from being able to get their agenda through the Senate. But every single one opposed the proposal. Every single Republican Senator in 1995 said: No, we may love our agenda, but we do not want to change the Senate. We don't want to jeopardize the Senate as a forum for forcing consensus and protecting minority rights and letting the voices of all of the people be heard on the Senate floor.

Not only the Republican Senators in 1995 had that opinion. Here are some things that were said mostly in 2005 by Democratic leaders. There were some Republicans who had the same idea the Senator from Iowa has about diminishing the effectiveness of the filibuster. In this case, they wanted to diminish the use of filibusters on judicial nominations. There was great consternation because Democrats decided to filibuster President Bush's judges. I didn't like that either. This is what has been said by Democrats.

Senator Robert Byrd in his last testimony before the Rules Committee:

> We must never, ever, ever, ever tear down the only wall, the necessary fence, that this Nation has against the excesses of the Executive Branch.

What is that necessary fence? That necessary fence is anchored in the filibuster.

Senator SCHUMER of New York in 2005:

The checks and balances which have been at the core of this Republic are about to be evaporated.

This was in response to the Republicans who were trying to diminish the effectiveness of the filibuster in 2005. ''The checks and balances'' Senator SCHUMER said, ''which say that if you get 51 percent of the vote, you don't get your way 100 percent of the time.''

Former Senator Hillary Clinton:

You've got majority rule. Then you've got the Senate over here where people can slow things down, where they can debate, where they have something called the filibuster. You know, it seems like it's a little less than efficient. Well, that's right, it is. And deliberately designed to be so.

Senator Dodd more recently:

I'm totally opposed to the idea of changing the filibuster rules. I think that's foolish, in my view.

Senator Byrd:

That's why we have a Senate, to amend and debate freely.

Senator Dodd:

I can understand the temptation to change the rules that make the Senate so unique and simultaneously so terribly frustrating. But whether such temptation is motivated by a noble desire to speed up the legislative process or by pure political expediency, I believe such changes would be unwise . . .

Therefore, to my fellow Senators who never served a day in the minority, I urge you to pause in your enthusiasm to change Senate rules.

Just two more.

Senator REID, who was then the Democratic leader but the minority leader, said in 2005:

The filibuster is far from a ''procedural gimmick.'' It's part of the fabric of this institution that we call the Senate. For 200 years we've had the right to extend the debate. It's not procedural gimmick. Some in this chamber want to throw out 214 years of Senate history in the quest for absolute power. They want to do away with Mr. Smith, as depicted in that great movie, being able to come to Washington. They want to do away with the filibuster. They think they're wiser than our Founding Fathers. I doubt that's true.

Then there was one other Senator who spoke and who said this, the Senator from Illinois, Senator Obama:

Then if the majority chooses to end the filibuster, if they choose to change the rules and put an end to the Democratic debate, then the fighting and the bitterness and the gridlock will only get worse.

I think the last 2 years in the Senate have been an aberration. We have had no incentive for the majority to take the ideas of the minority because the majority had these huge majorities, nearly 60 votes here, and a Democratic President.

So when Senator CORKER, my colleague from Tennessee, began to work on the financial regulation bill, there came a time in the process where the Democrats said: Well, you know, we like CORKER, and he has got some good ideas, but we do not need his vote to pass this bill. We have got the votes. We won the election. We will write the bill.

So the Senate has had no consensus. Instead, we had a Democratic financial regulation bill. We had a Democratic health care bill. We had a mostly Democratic stimulus bill. We might have had one or two Republicans vote for it.

For the last 2 years, we have not had any experience in working across party lines. What the filibuster does is say, you are not going to pass anything in the Senate unless at least some Republicans and some Democrats agree. You will not pass anything unless you get a consensus.

Then that will change behavior, and people say, okay, let's bring a No Child Left Behind bill to the floor. But it has got to have the support of Senator ENZI and Senator HARKIN or it is not going anywhere, because it has got to have 60 votes to move forward. What is the advantage of that? The advantage of that is the comparison of the Civil Rights bill in 1964, and the health care law of 2009.

In 1964, after a bitter fight led by Senator Russell of Georgia, the Civil Rights bill passed the Senate, overcoming a filibuster. The bill was written in the Republican leader's office. It was not just sent over there in the middle of the night during Christmas, it was written in his office. You had President Johnson, a Democrat, and Senator Dirksen saying, this is good for the country. A lot of people hated the bill. And some people thought it did not go far enough.

What did Senator Russell do, who had fought that bill for his whole term here? He went home to Georgia and said, I did everything I could to stop it, but it is the law, and we must obey it. So not only does the Senate need a consensus to get a better bill, we need a bill that the country will accept.

Compare that to the health care law in 2009. A lot of good intentions went into the health care law. I know that. Senator HARKIN was in the middle of that, but the fact of the matter was that it was a Democratic bill. It was rammed through Christmas Eve in the middle of the night. We barely had a chance to look at the bill, and it passed with a solely partisan vote.

And what happened? Instead of everybody going home and saying, it is the law of the land, we support it, an instant movement was created to repeal it and replace it. I hope we will not do what Senator HARKIN suggests. I think his proposal will create a situation where the majority says: well, we are going to hang you, but we will hang you in 3 days instead of tonight. They will narrow it down until they can pass a measure with 51 votes.

So if the Republican House of Representatives passes a bill to repeal the health care law, then you know Senate Republicans would pass it, too, if we have got 51 votes. Or if the Democratic House, as they did last year, passes a bill to repeal the ballot in secret elections then the Democrats over here will pass it, too, if they have 51 votes. But when a consensus is required, if bills such as that come from the House to the Senate, we in the Senate say, whoa, let's think this over. We do not pass it. We do not pass it unless we have some kind of consensus.

That does not mean all the Republicans and all of the Democrats must always agree. We had almost all of the Republicans and some of the Democrats on the tax agreement that was passed in December. On the New START treaty, we had almost all of the Democrats and some of the Republicans support it. But in each case, at least you had substantial consensus from both parties, and I think the country respects and appreciates that.

I think the Framers knew what they were doing when they created a majoritarian House, in other words, the freight train that can run through whatever the result of election is. And when they created a different kind of Senate. A different kind of Senate that Senator Byrd eloquently has said has been one where we can say, you are not going to pass anything unless we do it together. That is called consensus. That is called cooperation. I think the American people would be greatly relieved.

My question I wish to pose through the Chair to Senator HARKIN is, what is a filibuster? Senator SANDERS was on the floor for several hours on the tax debate last month. He spoke for 8 or 9 hours. I guess that is a filibuster in the traditional sense. But I think the kind of filibuster the Senator from Iowa is counting is this: let's say Senator REID brings a health care bill to the floor, and I rush over to offer an amendment to the health care bill, and Senator REID says: Sorry, I am going to cut off your amendment. Then I object. Senator REID calls what I tried to do a filibuster.

If we are just talking and amending and debating, that is not a filibuster. It is not a filibuster until the majority leader cuts off debate and amendments. So what the Democrats are counting as filibusters is the number of times they have cut us off from doing what we are supposed to do, which is, amend and debate.

It is like being invited to sing on the Grand Ole Opry, and getting there and you are not allowed to sing. The people of Tennessee do not expect me to come up here and sit on a log just because the distinguished majority leader says he does not want my amendments. What was traditional in the Senate is that Senators could offer amendments and debate, at almost any time, on almost any bill. In the days of Senator Byrd and Senator Baker, they would have 300 amendments filed. They would start voting. So some Senators would say, well, it is Thursday, don't we go home? The Leaders would say no, we are going to vote, unless you want to

give up your amendment. Instead of doing that, we did not vote on one Friday in the Senate this past year, and a lot of Senators on both sides of the aisle do not want to vote on controversial issues. If we look for consensus, if we were willing to vote on controversial issues, and if we ended the 3-day work week, if the majority thinks the minority is abusing the filibuster, they can confront it. They can sit over there and they can say to us, okay, Senator ALEXANDER, 60 of us are ready to cut this off. We are ready to get on to a vote. So you have got 7 hours that you can speak, then you have got to get 23 other Senators to take the other hours. If you stop talking, we are going to put the question to a vote, and we have got some motions we can make about your being dilatory. In other words, we can make life miserable for you, because we are going to do this all night long.

Senator Byrd said in his last testimony: The rules exist today to confront a filibuster.

So my question to the Senator from Iowa which I would pose through the Chair is: What is a filibuster? Is a filibuster when I come down to the floor to amend the health care bill, and the majority leader says, sorry, I am going to use my powers to cut it off? You cannot amend the bill. And then he files cloture.

That is what he calls a filibuster, I think. What I call it is cutting off my right to amend, right to debate, right to do my job.

EXHIBIT 1

THE FILIBUSTER: ''DEMOCRACY'S FINEST SHOW . . . THE RIGHT TO TALK YOUR HEAD OFF''

(Address by Senator Lamar Alexander, Heritage Foundation, Jan. 4, 2011)

Voters who turned out in November are going to be pretty disappointed when they learn the first thing some Democrats want to do is cut off the right of the people they elected to make their voices heard on the floor of the U.S. Senate.

In the November elections, voters showed that they remember the passage of the health care law on Christmas Eve, 2009: midnight sessions, voting in the midst of a snow storm, back room deals, little time to read, amend or debate the bill, passage by a straight party line vote.

It was how it was done as much as what was done that angered the American people. Minority voices were silenced. Those who didn't like it were told, ''You can read it after you pass it.'' The majority's attitude was, ''We won the election. We'll write the bill. We don't need your votes.''

And of course the result was a law that a majority of voters consider to be an historic mistake and the beginning of an immediate effort to repeal and replace it.

Voters remembered all this in November, but only 6 weeks later Democratic senators seemed to have forgotten it. I say this because on December 18, every returning Democratic senator sent Senator Reid a letter asking him to ''take steps to bring [Republican] abuses of our rules to an end.''

When the United States Senate convenes tomorrow, some have threatened to try to change the rules so it would be easier to do with every piece of legislation what they did with the health care bill: ram it through on a partisan vote, with little debate, amendment, or committee consideration, and without listening to minority voices.

The brazenness of this proposed action is that Democrats are proposing to use the very tactics that in the past almost every Democratic leader has denounced, including President Obama and Vice President Biden, who has said that it is ''a naked power grab'' and destructive of the Senate as a protector of minority rights.

The Democratic proposal would allow the Senate to change its rules with only 51 votes, ending the historical practice of allowing any senator at any time to offer any amendment until sixty senators decide it is time to end debate.

As Investor's Business Daily wrote, ''The Senate Majority Leader has a plan to deal with Republican electoral success. When you lose the game, you simply change the rules. When you only have 53 votes, you lower the bar to 51.'' This is called election nullification.

Now there is no doubt the Senate has been reduced to a shadow of itself as the world's greatest deliberative body, a place which, as Sen. Arlen Specter said in his farewell address, has been distinctive because of ''the ability of any Senator to offer virtually any amendment at any time.''

But the demise of the Senate is not because Republicans seek to filibuster. The real obstructionists have been the Democratic majority which, for an unprecedented number of times, used their majority advantage to limit debate, not to allow amendments and to bypass the normal committee consideration of legislation.

To be specific, according to the Congressional Research Service:

1. the majority leader has used his power to cut off all amendments and debate 44 times—more than the last six majority leaders combined;

2. the majority leader has moved to shut down debate the same day measures are considered (same-day cloture) nearly three times more, on average, than the last six majority leaders;

3. the majority leader has set the record for bypassing the committee process bringing a measure directly to the floor 43 times during the 110th and 111th Congresses.

Let's be clear what we mean when we say the word ''filibuster.'' Let's say the majority leader brings up the health care bill. I go down to the floor to offer an amendment and speak on it. The majority leader says ''no'' and cuts off my amendment. I object. He calls what I tried to do a filibuster. I call what he did cutting off my right to speak and amend which is what I was elected to do. So the problem is not a record number of filibusters; the problem is a record number of attempts to cut off amendments and debate so that minority voices across America cannot be heard on the floor of the Senate.

So the real ''party of no'' is the majority party that has been saying ''no'' to debate, and ''no'' to voting on amendments that minority members believe improve legislation and express the voices of the people they represent. In fact, the reason the majority leader can claim there have been so many filibusters is because he actually is counting as filibusters the number of times he filed cloture—or moved to cut off debate.

Instead of this power grab, as the new Congress begins, the goal should be to restore the Senate to its historic role where the voices of the people can be heard, rather than silenced, where their ideas can be offered as amendments, rather than suppressed, and where those amendments can be debated and voted upon rather than cut off.

To accomplish this, the Senate needs to change its behavior, not to change its rules. The majority and minority leaders have been in discussion on steps that might help accomplish this. I would like to discuss this afternoon why it is essential to our country that cooler heads prevail tomorrow when the Senate convenes.

One good example Democrats might follow is the one established by Republicans who gained control of both the Senate and House of Representatives in 1995. On the first day of the new Republican majority, Sen. Harkin proposed a rule change diluting the filibuster. Every single Republican senator voted against the change even though supporting it clearly would have provided at least a temporary advantage to the Republican agenda.

Here is why Republicans who were in the majority then, and Democrats who are in the majority today, should reject a similar rules change:

First, the proposal diminishes the rights of the minority. In his classic Democracy in America, Alexis de Tocqueville wrote that one of his two greatest fears for our young democracy was the ''tyranny of the majority,'' the possibility that a runaway majority might trample minority voices.

Second, diluting the right to debate and vote on amendments deprives the nation of a valuable forum for achieving consensus on difficult issues. The founders knew what they were doing when they created two very different houses in Congress. Senators have six-year terms, one-third elected every two years. The Senate operates largely by unanimous consent. There is the opportunity, unparalleled in any other legislative body in the world, to debate and amend until a consensus finally is reached. This procedure takes longer, but it usually produces a better result—and a result the country is more likely to accept. For example, after the Civil Rights Act of 1964 was enacted, by a bipartisan majority over a filibuster led by Sen. Russell of Georgia, Sen. Russell went home to Georgia and said that, though he had fought the legislation with everything he had, ''As long as it is there, it must be obeyed.'' Compare that to the instant repeal effort that was the result of jamming the health care law through in a partisan vote.

Third, such a brazen power grab by Democrats this year will surely guarantee a similar action by Republicans in two years if Republicans gain control of the Senate as many believe is likely to happen. We have seen this happen with Senate consideration of judges. Democrats began the practice of filibustering President Bush's judges even though they were well-qualified; now Democrats are unhappy because many Republicans regard that as a precedent and have threatened to do the same to President Obama's nominees. Those who want to create a freight train running through the Senate today, as it does in the House, might think about whether they will want that freight train in two years if it is the Tea Party Express.

Finally, it is hard to see what partisan advantage Democrats gain from destroying the Senate as a forum for consensus and protection of minority rights since any legislation they jam through without bipartisan support will undoubtedly die in the Republican-controlled House during the next two years.

* * *

The reform the Senate needs is a change in its behavior, not a change in its rules. I have talked with many senators, on both sides of the aisle, and I believe most of us want the same thing: a Senate where most bills are considered by committee, come to the floor as a result of bipartisan cooperation, are debated and amended and then voted upon.

It was not so long ago that this was the standard operating procedure. I have seen the Senate off and on for more than forty years, from the days in 1967 when I came to the Senate as Sen. Howard Baker's legislative assistant. That was when each senator

had only one legislative assistant. I came back to help Sen. Baker set up his leadership office in 1977 and watched the way that Sen. Baker and Sen. Byrd led the Senate from 1977 to 1985, when Democrats were in the majority for the first four years and Republicans were the second four years.

Then, most pieces of legislation that came to the floor had started in committee. Then that legislation was open for amendment. There might be 300 amendments filed and, after a while, the majority would ask for unanimous consent to cut off amendments. Then voting would begin. And voting would continue.

The leaders would work to persuade senators to limit their amendments but that didn't always work. So the leaders kept the Senate in session during the evening, during Fridays, and even into the weekend. Senators got their amendments considered and the legislation was fully vetted, debated and finally passed or voted down.

Sen. Byrd knew the rules. I recall that when Republicans won the majority in 1981, Sen. Baker went to see Sen. Byrd and said, ''Bob I know you know the rules better than I ever will. I'll make a deal with you. You don't surprise me and I won't surprise you.''

Sen. Byrd said, ''Let me think about it.''

And the next day Sen. Byrd said yes and the two leaders managed the Senate effectively together for eight years.

What would it take to restore today's Senate to the Senate of the Baker-Byrd era?

Well, we have the answer from the master of the Senate rules himself, Sen. Byrd, who in his last appearance before the Rules Committee on May 19, 2010 said: ''Forceful confrontation to a threat to filibuster is undoubtedly the antidote to the malady [abuse of the filibuster]. Most recently, Senate Majority Leader Reid announced that the Senate would stay in session around-the-clock and take all procedural steps necessary to bring financial reform legislation before the Senate. As preparations were made and cots rolled out, a deal was struck within hours and the threat of filibuster was withdrawn. . . . I also know that current Senate Rules provide the means to break a filibuster.''

Sen. Byrd also went on to argue strenuously in that last speech that ''our Founding Fathers intended the Senate to be a continuing body that allows for open and unlimited debate and the protection of minority rights. Senators,'' he said, ''have understood this since the Senate first convened.''

Sen. Byrd then went on: ''In his notes of the Constitutional Convention on June 26, 1787, James Madison recorded that the ends to be served by the Senate were 'first, to protect the people against their rulers, secondly, to protect the people against the transient impressions into which they themselves might be led. . . They themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose against impetuous councils.' That fence,'' Sen. Byrd said in that last appearance, ''was the United States Senate. The right to filibuster anchors this necessary fence. But it is not a right intended to be abused.''

''There are many suggestions as to what we should do. I know what we must not do. We must never, ever, ever, ever tear down the only wall—the necessary fence—this nation has against the excess of the Executive Branch and the resultant haste and tyranny of the majority.''

What would it take to restore the years of Sens. Baker and Byrd, when most bills that came to the floor were first considered in committee, when more amendments were considered, debated and voted upon?

1. Recognize that there has to be bipartisan cooperation and consensus on important issues. The day of ''we won the election, we jam the bill through'' will have to be over. Sen. Baker would not bring a bill to the floor when Republicans were in the majority unless it had the support of the ranking Democratic committee member.

2. Recognize that senators are going to have to vote. This may sound ridiculous to say to an outsider, but every Senate insider knows that a major reason why the majority cuts off amendments and debate is because Democratic members don't want to vote on controversial issues. That's like volunteering to be on the Grand Ole Opry but then claiming you don't want to sing. We should say, if you don't want to vote, then don't run for the Senate.

3. Finally, according to Sen. Byrd, it will be the end of the three-day work week. The Senate convenes on most Mondays for a so-called bed-check vote at 5:30. The Senate during 2010 did not vote on one single Friday. It is not possible either for the minority to have the opportunity to offer, debate and vote on amendments or for the majority to forcefully confront a filibuster if every senator knows there will never be a vote on Friday.

There are some other steps that can be taken to help the Senate function better without impairing minority rights.

One bipartisan suggestion has been to end the practice of secret holds. It seems reasonable to expect a senator who intends to hold up a bill or a nomination to allow his colleagues and the world know who he or she is so that the merits of the hold can be evaluated and debated.

Second, there is a crying need to make it easier for any President to staff his government with key officials within a reasonable period of time. One reason for the current delay is the President's own fault, taking an inordinately long time to vet his nominees. Another is a shared responsibility: the maze of conflicting forms, FBI investigations, IRS audits, ethics requirements and financial disclosures required both by the Senate and the President of nominees. I spoke on the Senate floor on this, titling my speech ''Innocent until Nominated.'' The third obstacle is the excessive number of executive branch appointments requiring Senate confirmation. There have been bipartisan efforts to reduce these obstacles. With the support the majority and minority leaders, we might achieve some success.

Of course, even if all of these efforts succeed there still will be delayed nominations, bills that are killed before they come to the floor and amendments that never see the light of day. But this is nothing new. I can well remember when Sen. Metzenbaum of Ohio put a secret hold on my nomination when President George H.W. Bush appointed me education secretary. He held up my nomination for three months, never really saying why.

I asked Sen. Rudman of New Hampshire what I could do about Sen. Metzenbaum, and he said, ''Nothing.'' And then he told me how President Ford had appointed him to the Federal Communications Commission when he, Rudman, was Attorney General of New Hampshire. The Democratic senator from New Hampshire filibustered Rudman's appointment until Rudman finally asked the president to withdraw his name.

''Is that the end of the story?'' I asked Rudman.

''No,'' he said. ''I ran against the [so-and-so] and won, and that's how I got into the Senate.''

During his time here Sen. Metzenbaum would sit at a desk at the front of the Senate and hold up almost every bill going through until its sponsor obtained his approval. Sen. Allen of Alabama did the same before Metzenbaum. And Sen. John Williams of Delaware during the 1960's was on the floor regularly objecting to federal spending when I first came here forty years ago.

* * *

I have done my best to make the argument that the Senate and the country will be served best if cooler heads prevail and Democrats don't make their power grab tomorrow to make the Senate like the House, to permit them to do with any legislation what they did with the health care law. I have said that to do so will destroy minority rights, destroy the essential forum for consensus that the Senate now provides for difficult issues, and surely guarantee that Republicans will try to do the same to Democrats in two years. More than that, it is hard to see how Democrats can gain any partisan advantage from this destruction of the Senate and invitation for retribution since any bill they force through the Senate in a purely partisan way during the next two years will surely be stopped by the Republican-controlled House of Representatives.

But I am not the most persuasive voice against the wisdom of tomorrow's proposed action. Other voices are. And I have collected some of them, mostly Democratic leaders who wisely argued against changing the institution of the Senate in a way that would deprive minority voices in America of their right to be heard:

From Mr. Smith Goes to Washington

Jimmy Stewart: Wild horses aren't going to drag me off this floor until those people have heard everything I've got to say, even if it takes all winter.

Reporter: H.V. Kaltenborn speaking, half of official Washington is here to see democracy's finest show. The filibuster—the right to talk your head off.

Sen. Robert Byrd's final appearance in the Senate Rules Committee

SENATOR ROBERT BYRD: We must never, ever, ever, ever, tear down the only wall, the necessary fence, that this nation has against the excesses of the Executive Branch.

SEN. CHUCK SCHUMER: The checks and balances which have been at the core of this Republic are about to be evaporated. The checks and balances which say that if you get 51% of the vote, you don't get your way 100% of the time.

FORMER SEN. CLINTON: You've got majority rule. Then you've got the Senate over here where people can slow things down where they can debate where they have something called the filibuster. You know it seems like it's a little less than efficient, well that's right, it is. And deliberately designed to be so.

SEN. DODD: I'm totally opposed to the idea of changing the filibuster rules. I think that's foolish in my view.

SEN. BYRD: That's why we have a Senate, is to amend and debate freely.

SEN. ALEXANDER: The whole idea of the Senate is not to have majority rule. It's to force consensus. It's to force there to be a group of Senators on either side who have to respect one another's views so they work together and produce 60 votes on important issues.

SEN. DODD: I can understand the temptation to change the rules that make the Senate so unique and simultaneously so terribly frustrating. But whether such temptation is motivated by a noble desire to speed up the legislative process or by pure political expediency, I believe such changes would be unwise.

SEN. ROBERTS: The Senate is the only place in government where the rights of a

numerical minority are so protected. A minority can be right, and minority views can certainly improve legislation

SEN. ALEXANDER: The American people know that it's not just the voices of the Senator from Kansas or the Senator from Iowa that are suppressed when the Majority Leader cuts off the right to debate, and the right to amend. It's the voices that we hear across this country, who want to be heard on the Senate floor.

SEN. GREGG: You just can't have good governance if you don't have discussion and different ideas brought forward.

SEN. DODD: Therefore to my fellow Senators, who have never served a day in the minority, I urge you to pause in your enthusiasm to change Senate rules.

SEN. REID: The Filibuster is far from A 'Procedural Gimmick.' It's part of the fabric of this institution that we call the Senate. For 200 years we've had the right to extend the debate. It's not procedural gimmick. Some in this chamber want to throw out 214 years of Senate history in the quest for absolute power. They want to do away with Mr. Smith, as depicted in that great movie, being able to come to Washington. They want to do away with the filibuster. They think they're wiser than our Founding Fathers, I doubt that's true.

FORMER SEN. OBAMA: Then if the Majority chooses to end the filibuster, if they choose to change the rules and put an end to Democratic debate, then the fighting and the bitterness and the gridlock will only get worse.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I will respond to my friend from Tennessee who makes cogent arguments, as he always does. He is a good friend of mine, and we have worked together on a lot of things. I hope this is the beginning of some colloquies we can have here. I do want to indulge and let other Senators have their say because they were so kind to let me have my say too. But I intend to be here as long as anybody wants to say anything or to engage in some colloquies here on the Senate floor.

I say to my friend from Tennessee, that as I listened to him, and I did very carefully, there are a couple of things I want to point out in terms of this idea of a filibuster and being able to amend things. My friend referred many times to the health care bill. I do not know if my friend said this, but I have heard it said that we wrote it behind closed doors and all of that kind of stuff.

Let me point out that when it came to our committee, the HELP Committee, we had 13 days of markup, 54 hours. We allowed any amendment to be offered. The Senator is a member of that committee. We allowed any Senator on our committee to offer any amendment. We adopted 161 Republican amendments, either through some votes, which they won, or through just adopting the amendments. Then after that, after all of that, all Republicans voted no. That is fine. There are a lot of times I know in the past when I have had an amendment on a bill which I thought improved it, but overall I did not like the bill, and I voted against it. I think that is the right of the minority. But then to obstruct it and to try to obstruct it to keep it from even being enacted I do not think is right. So I would say to my friend that I do not think the health care bill is a good example.

I say to my friend, he quoted someone, I think maybe it may have been Senator REID, saying, do people think they are wiser than our Founding Fathers. Please show me where our Founding Fathers ever set up a system where the Senate could have unlimited debate? They never did that. It is not in the Constitution.

As I pointed out, the first Senate actually had the motion, the previous question, to cut off debate. And they did not set up a majoritarian House. Article I section 5, I say to my friend from Tennessee, article I, section 5 is very clear. Each House sets up its rules. If the new majority in the House wanted to, they could set up rules to be like the Senate. They could do that. They could set up rules however they wanted, as long as they were constitutional. I suppose someone could take it to court to see if it was constitutional. But they do not have to operate under those rules. We do not have to operate under these rules. The Constitution gives us the right to change those rules.

Our Founding Fathers never set up this system, by the way, never. There is no mention of it anywhere in the Constitution. They did not set up a majoritarian House, they set up article I, section 5, which said each House can set up its own rules. But then in the Constitution, they outlined certain prerogatives. The Senate has certain prerogatives, the House has certain prerogatives, such as, for example, all bills of revenue have to originate in the House, not in the Senate. Treaties are done by the Senate, not by the House. But they never set up any kind of majoritarian type of thing.

I say to my friend, on the filibuster, I think there is a reason for a filibuster. I think there ought to be filibusters. I think there ought to be times when the minority can slow down things in order to get their views heard, or in order for them to be able to offer amendments, to make the bill better, in their views. That is the right of the minority.

I do not think it is the right of any minority—I say minority. When I say that, I am not talking about Republicans. I am saying any minority here. I do not think it is the right of any minority here to say, if I do not get my way, I am going stop everything. That is kind of what I see happening around here. If I do not get my way, one Senator can stop things.

I point out one other bill, I say to my friend from Tennessee, that I thought was a great bipartisan bill. We worked hard on it in our committee. The Senator from Tennessee was instrumental. That was the food safety bill. We reported it out of our committee a year ago in November, unanimous vote. Everyone voted for it, Republicans and Democrats on our committee. We got it out. But there were some things in the bill that Senators not on our committee, and maybe one Senator on our committee, did not like. So we had to work through the ensuing months to get everybody onboard and to work it out, which is fine. I have no problems with that. That is the legislative process. I have patience. As my friend from Kansas knows, I have a lot of patience working on farm bills. They take time.

But we worked it all out. And yet one Senator, one Senator who really disagreed with it, was able to hold it up from coming on the floor. We finally got it on the floor, but it took almost a year. One Senator was able to do that.

So I say, one Senator should be able to have the right to offer amendments, to be heard, but not to stop everything. I guess that is what I come down to, I say to my friend from Tennessee, that there ought to be a—I think there is a reason and a good reason for the Senate to be that saucer that cools things down, the story about Jefferson and Washington. But it should be at some point in time where the majority has not only the authority but the power to act after a due consideration and a due period of time.

I believe, I say to my friend in all sincerity, that will promote more compromise than the present system. You may disagree, but I feel that would. I am not trying to take away compromise. I believe in compromise. I believe in working things out. As chairman of the Agriculture Committee for two farm bills, we worked things out. I am sure there were things in the farm bill that the Senator from Kansas did not like, and there were things in there that I did not like, even though I was chairman. But you work these things out. You compromise and you get things done. So I believe in that spirit of compromise. But I think what we have here now—and that escalating arms race—is doing away with that spirit of compromise and working things out and moving things. That is why I think we have to change the rules.

I do not know if I adequately responded to my friend from Tennessee, but these were my thoughts at the end. I am looking forward to other comments from other Senators and engaging in our colloquies. I promise I will not take so long.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I thank my colleagues for their pertinent remarks.

The Senator from Iowa said in the past he had entered into a colloquy with colleagues on our side of the aisle where they wandered over into each other's pastures. I am going to put down this microphone for a moment and speak from here in a gesture of bipartisanship on how we can improve the Senate.

I know we have heard a lot of talk about Robert C. Byrd, a beloved individual. I know the Presiding Officer

was very close to the former Senator. The last time Bob Byrd spoke publicly was in the rules committee, when he rose to the occasion in a very passionate way. The chairman, of course, CHUCK SCHUMER, the Senator from New York, with great deference recognized Senator Byrd. We were all on the edge of our chairs. The Senator from Tennessee has already gone over what Senator Byrd said at that time and previously. But I remember when I first came to the Senate, it was required that we go to school, so to speak, and Senator Byrd talked to all of the freshmen at that particular time.

The keeper of the institutional flame was the tag I put on Senator Byrd. My wife Franki and I became very close friends of the Senator. At any rate, he recounted the story attributed to Jefferson and Washington, he would tell every incoming class about the role of the people's House and perhaps what happened, when they put the coffee pot on in regards to legislation, that the coffee was so hot it would boil over, and it was the Senate's duty to act as the saucer, as folks did back in West Virginia in the earlier days, or Kansas or Iowa or Tennessee or Texas, that they would pour the coffee out in the saucer and let it cool off a little bit so they could put their biscuit in it and actually eat it, and then the legislation would pass.

The problem is, sometimes on our side maybe we want tea, maybe we want to start over. I think the Senator from Tennessee basically hit the nail on the head with the massive three. If we are going to talk about getting things done or not getting things done, there are three massive things that have happened with regard to legislation. I say ''massive'' because they were so overreaching, so overwhelming, we are now just learning what their implications are. The massive three are financial regulatory reform, the health care act, and the stimulus.

Now the health care act, I have a personal feeling about that in that I had 11 amendments, all on rationing.

By the way, the Senate never confirmed the nomination of Dr. Donald Berwick, the head of CMS, the Center for Medicare and Medicaid Services. We planned to ask a lot of questions to the doctor because of statements he made in the past. Obviously, that confirmation did not happen. He was a recess appointment. That is something I think we ought to deal with as well.

Now, the health care act, it was 12:30 in the morning in the Finance Committee. I had several amendments, all on rationing. Finally, we got to the last two. I said: Why don't we consider them en bloc? I had about a minute or two to explain each amendment. They were voted down automatically on a party-line vote. By the time we got to 12:30 or 1 o'clock and my amendments, I noticed Senator SCHUMER was in the room so I stuck on one of his amendments along with mine. It was defeated on a party-line vote. Then I let Senator SCHUMER know that we had defeated his amendment as well. He wasn't too happy with that.

I just showed that the process has broken down to the point that even in committee, if you had two amendments, if you had five, if you had one, you were simply ignored. Then the health care act came to the floor and worked its way. I think the Senator from Tennessee brought up the ''Grand Ole Opry.'' I saw it as making a bill behind closed doors. That is a famous country western song. We didn't like that process at all.

I finally had only one other recourse and that was to go to the reconciliation process, which I knew was not going to be successful, but I had several amendments, all were defeated. My main concerns about the health care bill were not allowed, as far as I was concerned, on the floor of the Senate, and that has happened a lot.

Now we are seeing an effort to repeal the health care act and also an effort to try to fix it, if we possibly can. I am not as upset about that as some people are because I think we could get the proper kind of debate, but the debate must proceed in regular order and under the standing rules of the Senate as a continuing body.

I am not going to go into the quotes by Senator Byrd. That has already been done by Senator ALEXANDER. But I would like to quote Senator Dodd in his valedictory speech.

> The history of this young democracy, the Framers decided, should not be written solely in the hand of the majority.

This isn't about the filibuster. That is the most important statement he made.

> What will determine whether this institution works or not is whether each of the 100 Senators can work together.

How can we do that? Here is a classic example. Right before Christmas, there were several bills the majority wanted to pass without allowing the minority and the American people the right to debate or amend them. So the tree was filled, and that is the parliamentary language to say: I am sorry, we are going to cut off debate. In the first three years and four months of this majority, the use of filling the tree went up over 300 percent compared to the average for the previous 22 years. Ninety-eight times in the 110th Congress, cloture was filed the moment the question was raised on the floor. A debate was not even allowed to take place. So on one hand you can talk about filibusters; the other hand is filling the tree, or not allowing Members to offer amendments, and same day clotures.

The Senator from Tennessee offered the classic example. Let's go back to a few days ago, right before Christmas. The DREAM Act was a House bill. I know the Senate leadership wanted to pass it. It never had a legislative hearing in the House, never had a markup in the House. The Senate version of the DREAM Act had not had a markup since 2003. In sum, the DREAM Act, a controversial measure with very passionate beliefs on both sides of the aisle and within the parties as well had not had an amendment offered to it in either House of Congress either in committees or on the floor.

Some may believe the DREAM Act is perfect or certainly is the best bill possible and would not need any amendments to improve it. But, obviously, our constituents don't feel that way. It is a very controversial bill. Instead of addressing their concerns, the majority shut down debate and amendments and in the process shut down the rights of Americans to be heard. As a result, the minority refused to end debate and, obviously, there was a filibuster. It would be interesting to know, of the times that bills have been filibustered, what was being filibustered.

Contrast this with the approach taken on the 9/11 bill which the majority sought to pass just a few days later. The goal of providing help to the victims of 9/11 is one Members of both parties share, but Senate Republicans noted that the particular version of the bill Senate Democrats supported was problematic in regards to how much money we were spending and certainly would need improvement.

So we insisted on having our concerns addressed. Most of them were addressed with a revised bill on which we did provide input. That bill passed the Senate by unanimous consent, and even the proponents of the original legislation would admit that the final bill is a better one and now enjoys broader support due to the minority's input.

What I think the majority needs to do is involve the minority like it did on the 9/11 bill, not shut us out, not shut us down as it did on the DREAM Act and other acts.

If that happened, if we did not fill the tree, I think possibly 75 percent, 80 percent of the filibusters would go away. There are some who would like to filibuster anything, I know. But it gets back to what the Senator asked: Why are we here? It is important to pass legislation. But it is equally important to prevent bad legislation from passing or, if you have an alternative you would like to offer, to at least have the ability to do so.

In the last 2 years that process has simply broken down. Why can't we work together? That is what Senator Dodd said. He asked whether each of the 100 Senators can work together. That was on the question of filibusters.

We can stop this business of secret holds. It seems to me we could have a timely pace on nominations. It seems to me we could certainly end these recess appointments where people who should be confirmed have to go through the confirmation process instead of all of a sudden parachuting somebody in who is controversial and now we have over 100,000 regulations pouring out of the Department of HHS. Health care providers throughout the Nation—in Iowa, Tennessee, Kansas—are wondering what on Earth is happening.

When I go home, I don't get the question of why a bill didn't pass. I get the question: What on Earth are you guys doing back there passing all the legislation with all the regulatory stuff that I have to put up with, taxes I have to pay, et cetera, et cetera?

As a matter of fact, when they pose that question, I say: I am not a you guy; I am an us guy. Then we have a debate, but it is a debate that should have taken place on the floor of the Senate instead of on the plains of Kansas. Unfortunately, because of the majority, we were not able to have that debate here, on the floor.

The question I have for the distinguished Senator from Iowa—and I appreciate his reference to our work in previous farm bills. We were able to work it out. Sometimes it was very contentious, and sometimes the farm bill would come to the floor, and it would take a week and a half. Then we would have an appropriations bill, and then the appropriators would think they could rewrite the farm bill and take another week and a half. But we worked through it. Nobody filled the tree and said: I am sorry, you can't have that amendment.

I am making a speech instead of asking the question. I apologize for that.

I am in agreement on secret holds. I think there should be timely pace on nominations. I do think we should go through the regular confirmation process.

But I do feel exactly as the Senator from Tennessee has put out, that once you get on this business of ending the filibuster or going down on the number of requisite votes, you are on a slippery slope, and then you are into the tyranny of the majority, and that is not what the Senate is all about.

I will stop at this point and ask the Senator from Iowa if he has any comments.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Iowa.

Mr. HARKIN. Madam President, I thank my friend from Kansas. I think he makes some good points.

I would say to my friend, I think we ought to go through processes in our committees to have hearings on nominees to flush out things such as that. So to that extent, the Senator from Kansas is right. We should not have, especially if there is any controversy at all—I suppose some of them are noncontroversial—but if there is some controversy out there, yes, I think the committees ought to have the responsibility to bring them forward. Let the committees question them. We did that in our HELP Committee, I say to my friend from Kansas. I am trying to remember the person we had—oh, a lot of controversy about Craig Becker, I think, who was going to the NLRB.

Mr. ROBERTS. If the Senator will yield, I think the Senator is exactly right. I am on the HELP Committee, as the Senator may recall, and I was trying to get one amendment to say that we would prohibit the use of rationing to achieve cost containment, and it involved several of the commissions that have been in the bill. I regret that bill sort of sat somewhere and collected dust. We never got a score. I thought it was, quite frankly, a better bill than the one in the Finance Committee.

I say to the Senator, you recognized me, and I had an opportunity to offer some amendments. At least there was some debate. And I think it was a much more bipartisan effort. So I give the chairman——

Mr. HARKIN. If it was out of our committee, obviously it was a better bill than coming out of the Finance Committee. But I say to my friend, again, that——

Mr. ROBERTS. Senator CORNYN wants to be heard, so I am going to be quiet and listen to you.

Mr. HARKIN. I thought there were some things we should talk about. I say to my friend, in listening to my friend from Kansas say this, it occurred to me that certain of his amendments were allowed. The Senator was allowed to debate them and offer them, but they were not adopted. It seems to me, as I have said before, the right of the minority ought to be to offer amendments, to have them considered, to have them voted on, but it does not mean it is the right of the minority to win every time on those amendments.

I say to my friend, on that financial services bill, I had an amendment too and I could not get it in. I was on the majority side, and they would not let me offer one either. So both sides have some legitimate points.

I also say to my friend from Kansas, and others, we can get into this tit for tat, who started it. I think we have to kind of quit that. I could come back and say: Well, yes, in the last 2 years, the tree was filled 44 times. In this last session, 44 times the tree was filled, but there were 136 filibusters. Why wouldn't there be 44 filibusters? Why were there 136? We can get into that tit for tat, who did what to whom. I wish to forget about all that. We could go back, probably, to the 18th century—tit for tat, who did what to whom at some point in time.

I ask my friend from Kansas, who has been here a long time—we served together in the House; my friend was chairman of the Agriculture Committee in the House. We have done a lot of legislation together—does my friend from Kansas feel the Senate is operating today in the best possible way? Does my friend from Kansas believe there could be some things done to make the Senate operate a little bit more openly and fairly with rights for the minority to be protected but without letting the minority—and I do not mean Republicans when I say ''minority,'' I mean whoever happens to be in the minority—to keep the minority from obstructing things? Does my friend feel there could be some changes made?

Mr. ROBERTS. I will answer the question, no. I do not think we are doing the job we could do, and we should do better, and I stand ready to work with all concerned to see if we can do that.

But my time is up, and I am going to cease here and allow the Senator from Texas to be recognized.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Madam President, may I inquire how much more time there is on our side?

The PRESIDING OFFICER. Three-and-a-half minutes.

Mr. CORNYN. Madam President, I am going to ask unanimous consent, with the indulgence of my colleagues, to allow me to speak for up to 10 minutes. I probably will speak about 5 minutes or so, unless I get particularly wound up, which could take 10 minutes. But I ask unanimous consent for an additional 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. I thank the Chair.

Madam President, I think we are playing with fire when we talk about amending the Senate rules. All of us have been here for different periods of time. I have been here for 8 years, which actually sounds like a long time, but in the life of the Senate is not very long at all in an institution that has existed for more than 200 years.

I have been here when our side was in the majority. As a matter of fact, we had the White House, we had both Houses of Congress. And I have been here when we have had President Obama in the White House and Democrats controlling both Houses of Congress. I can tell you, unequivocally, it is a whole lot more fun to be here when you are in the majority.

But there are certain temptations that the majority has which I think are exacerbated when, for example, during most of the last 2 years, one party or the other has the ability in the Senate to basically pass legislation by essentially a party-line vote; in other words, as I recall on that morning at 7 a.m. on Christmas Eve a year ago, when the vote on the health care bill came up where all 60 Democrats voted for the bill and no Republicans voted for the bill.

My point being: The temptation is, when you have such a large majority—60 or more—there is a huge temptation in both parties—not just the Democrats; Republicans, I am sure, would be tempted as well—to try to go it alone. Thus, I think it detracts from what is one of the great strengths of this institution, which is that this institution's rules force consensus, and unless there is consensus, things do not happen. We are, thus, the saucer that cools the tea from the cup, and all the various analogies we have heard.

But the important thing is not how this affects us as individual Senators. This is not just an abstract discussion about the rules. This is about what is in the best interests of a country of

more than 300 million people. I would submit any time one party or the other is not only tempted but yields to that temptation to go it alone to try to push legislation through without achieving that consensus, I think it hurts the institution and I think it provokes a backlash, much as we saw on November 2. Because the American people understand that checks and balances are important.

When we do not have checks and balances, either through the self-restraint of the majority or through recognizing the rights of the minority to offer amendments, to have debates, to contribute to legislation, then the American people are going to fix that by changing the balance of power, as they did on November 2.

Here again, I do not want to be misunderstood as making a partisan argument. I think Republicans would be just as tempted as Democrats to do the same thing. But I think that is where we have to show self-restraint and where, if we do not show self-restraint, then the American people will change the balance of power and establish those checks and balances.

Here again, I think for most people who are listening—if there is anyone listening out there on C–SPAN or elsewhere to this debate—this should not be about us. This should not be about the arcana of these rules. This should be about the rights of the American people to get legislation that affects all 300-plus million of us debated, amended, in a way to try to achieve that consensus and, thus, achieves broad support by the American people. Because anytime, again, we yield to the temptation to go it alone to do things on a partisan basis, it will ultimately provoke the kind of backlash we have seen over the health care bill, to mention one example.

This is not a small thing. I have the honor of representing 25 million people in the Senate, and this is not just about my rights as an individual Senator or even the minority's rights, this is about their right—their right to be heard through an adequate time for debate, their right to have an opportunity to change or amend legislation, and then to have a chance to have it voted on.

I understand the frustration of our colleagues when the majority leader, due to his right of prior recognition, can get the floor. He can put something on the Senate calendar that has not gone through a committee markup and that sort of due process and fair opportunity for amendment and participation; and then again, if he has 60 votes on his side to be able to push it through, then deny us any opportunity to offer amendments, much less to have a fulsome debate on these important issues.

I think our country suffers from that. I think the American people suffer when we are denied on their behalf an opportunity to have a fulsome debate and to offer amendments.

I do not doubt the good faith of our colleagues who are offering some of these propositions. There are even some of them that I find somewhat attractive. The idea of secret holds, for example—if there ever was a time for that, that time is long past gone. I know we are not going to agree on everything. But we ought to at least have an opportunity for everyone to be heard, and for individual Senators' rights to be respected, not because they are Senators but because they represent a large segment of the American people, and it is their rights that are impinged when the majority leader, for whatever reason, decides to deny a Senator a right to offer an amendment and a right to have a fulsome debate on the amendment in the interest of getting legislation passed.

Although Senator REID said this morning the 111th Congress has to go down in history as being one of the most productive Congresses, at the same time, he complained about Republicans filibustering legislation. There seems to be kind of an inherent contradiction there. But I suggest the explanation for that is the fact that our friends on the other side have had such a large supermajority, they have been able to muster the 60 votes and to go it alone. Again, I think that is yielding to a temptation that everyone would understand, and the American people have now since corrected that as a result of the November 2 election.

I would suggest, in closing, to all of our friends on both sides of the aisle, again, I recognize the sincerity of those who have offered these proposals, but I would suggest there is not a malfunction, or should I say the rules themselves are not broken, but the rules contemplate that the rules will not be abused. I think the temptation to abuse those rules by going it alone is understandable but something that needs to be avoided. I think because of the election now—since we are more evenly divided so nobody will be able to get to 60 votes unless there is a bipartisan consensus, to the extent that 60 votes are needed—that the American people have sort of fixed the problem some of our colleagues have perceived.

I thank the Chair.

Mr. HARKIN. Madam President, will the Senator yield for a question?

Mr. CORNYN. I am happy to yield for a question.

Mr. HARKIN. I thank my friend from Texas. Again, he and I have worked together on some legislation in the past too. He is a thoughtful Senator and a good legislator.

I ask my friend from Texas this: In listening to him, I almost have the feeling that my friend from Texas is saying we ought to have a supermajority to pass anything, that we should have 60 votes in order to pass anything.

I ask my friend, is that what my friend really means or implies, that everything should have 60 votes before it can go through here? Is that what my friend is suggesting?

Mr. CORNYN. I appreciate the question from my friend, the Senator from Iowa. That is not what I am suggesting. But I do think we need to have a process which allows for an opportunity for amendments and debate. And if we do not have a process requiring a threshold of 60 votes, the temptation is going to be, again, for the majority leader to deny the opportunity for amendments, constrict time allowed for an amendment, for debate, by filing cloture, and we are going to see things shooting through here that have not had an adequate opportunity for deliberation.

This institution has famously been called the world's greatest deliberative body, but I daresay we have not demonstrated that in recent memory. And, again, I think, as the Senator from Tennessee and others have observed, this is not a problem with the rules. This is the way the rules have actually been implemented. I think we have learned an important lesson from this and one I hope will help us respect the rights of all Senators, whether they be in the majority or the minority, to offer amendments and to debate these amendments not because they are about our rights but because they are about the rights, for example, of the 25 million people I represent. They have the right to be heard. They have a right to have any suggestions or improvements to legislation be considered. That is all I am saying.

Mr. HARKIN. Madam President, if my friend will yield further, again, in my resolution there is a guarantee that the minority has the right to offer amendments—absolute guarantee. As I said, that is something I have urged since 1995. I am very sympathetic to the argument that people are cut out from offering amendments. I know because that has happened to me by the majority at times. So I believe there ought to be rights for the minority. I always hasten to add when I say ''minority'' I am not saying Republicans, I am saying the minority. It may be us pretty soon. It goes back and forth, as my friends knows. There ought to be the right for the minority to offer amendments and to have their voice heard and to, as the Senator says, represent the people of our States adequately.

But I ask my friend again, what happens when we have one or two or three or four Senators who don't want to see a bill passed in any form—some bill, just take any bill—that maybe has been worked on by both Republicans and Democrats, has broad bipartisan support maybe to the tune of even 70 or so Senators, but there is one or two or three Senators who don't want it to pass anyway, and they are able to gridlock the place under rule XXII. I know the Senator talked about exercising self-restraint, and I say that is fine. But what if we had that situation where we have two or three Senators saying: I don't care how many Senators are on it I don't want it to move. And

they invoke their rights under rule XXII. How do we get over that hurdle?

Mr. CORNYN. Madam President, I would say to my friend the people who came before us thought achieving consensus was good, not unanimity, perhaps recognizing it is impossible to get 100 Senators to agree. So I would say to my friend I sometimes am as frustrated as he is when one or two or three or four Senators say: We are going to force this to a cloture vote because we are just not going to agree. I think that is frustrating to all of us, depending on which foot the shoe is on.

But I would say that is a small price to pay, that frustration, to insist on assuring the rights of the minority—again, not because of an individual Senator because we aren't all that important. It is the rights of our constituents whom we represent that are so important, and it is so important we get it right because there is nobody else after we get through who gets to vote. It becomes the law of the land, and unless it is unconstitutional not even the Supreme Court of the United States can set it aside. So it is very important we get it right. I am just saying that we take the time necessary, and I think that is what the rules are designed to provide for.

Mr. HARKIN. Madam President, if the Senator would indulge me for one more moment, so it is not the position of my friend from Texas that everything needs 60 votes in which to move in the Senate; is that correct?

Mr. CORNYN. Madam President, there are a long list of bills that pass on a regular basis by unanimous consent, and it is like—we are almost focused on the exception rather than the rule. There are many times—a lot of times; I can't quantify it—where legislation will pass by unanimous consent because it has gone through the committees, people have had an opportunity to offer amendments, both sides have had an opportunity to contribute to it, and then it passes without objection. Again, I can't quantify that, but the ones we seem to be focused on are the ones that seem to be more or less the exception to the rule where there are genuine disagreements, when there is a need to have a more fulsome debate and the opportunity for amendments.

So I think the current rules serve the interests of our constituents and the American people well.

I thank the Chair and I thank my colleague.

The PRESIDING OFFICER. The Senator from Oregon.

ORDER OF PROCEDURE

Mr. WYDEN. Madam President, Senator UDALL and Senator MERKLEY have waited at great length to make their remarks. I wish to propound a unanimous consent at this time. At this point, Senator UDALL would be the next speaker. There would be a Republican who would speak next. I am very hopeful it will be Senator GRASSLEY because he and I have been partners for almost 14 years in this effort to force the Senate to do public business in public and get rid of these secret holds. So after Senator UDALL, there would be Senator GRASSLEY. After Senator GRASSLEY, there would be my friend and colleague Senator MERKLEY who would speak. At that time there would be a Republican who would be next in the queue to speak.

So my unanimous consent request at that point is—I would like to be able, for up to 30 minutes, to have the bipartisan sponsors of the effort to get rid of secret holds once and for all, including the distinguished Presiding Officer, to have up to 30 minutes for a colloquy on this bipartisan effort to eliminate secret holds.

The PRESIDING OFFICER. Are there any time limits on the UC motion for any Senators other than the 30 minutes designated for the cosponsors of the secret hold legislation?

The Senator from New Mexico.

Mr. UDALL of New Mexico. Madam President, in addition to his UC, we have myself for 15 minutes, Senator MERKLEY for 15 minutes, and I believe Senator WYDEN has asked for 30, and then to accommodate the Republicans, our UC would say if there is a Republican seeking recognition that we alternate between the two sides and they be under the same time limitations as listed above. So Senator ALEXANDER can see I would speak for 15, and then he would have a block for 15, and then Senator MERKLEY, and then it would be 30 for Senator WYDEN.

Mr. WYDEN. Then, after Senator MERKLEY, there would be another Republican who would be in a position to speak for 15 minutes, and at that point under the unanimous consent request we would be able to discuss this bipartisan effort to eliminate secret holds for up to 30 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Madam President, I wonder if the Senator would mind a slight modification to that. One of the things I thought we were kind of getting into today were colloquies wherein we could ask a question and have a response in a reasonable manner. I would ask to modify the unanimous consent request to say that any colloquies entered into—questions propounded to a Senator through the Chair—not be detracted from the time allotted to that Senator.

Mr. WYDEN. I am very open to that. I think it is an excellent suggestion.

Mr. UDALL of New Mexico. I very much agree with that. I have been sitting here following the debate, and I think Senator ALEXANDER, among others, has propounded some very good questions. I actually have another question I was going to ask on top of his question of what is a filibuster. So I am looking forward to that portion of it. Senator HARKIN, thank you very much for that.

Mr. WYDEN. Madam President, I think Senator HARKIN has made an excellent suggestion. Unless Senator ALEXANDER or anyone on the other side has a problem with that, let's modify the unanimous consent request I have made to incorporate Senator HARKIN's suggestion.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New Mexico.

AMENDING SENATE RULES

Mr. UDALL of New Mexico. Madam President, I submit on behalf of myself and Senators HARKIN, MERKLEY, DURBIN, KLOBUCHAR, BROWN, BEGICH, BLUMENTHAL, GILLIBRAND, SHAHEEN, BOXER, TESTER, CARDIN, MIKULSKI, WARNER, and MANCHIN a resolution to amend rule VIII and rule XXII of the Standing Rules of the Senate, and I ask unanimous consent to proceed to the immediate consideration of the resolution.

The PRESIDING OFFICER. Is there objection?

Mr. ALEXANDER. Madam President, reserving the right to object, I have had a number of discussions with the Senator from New Mexico and the Senator from Oregon. I respect their proposals and will have more to say about them, but I think since they have waited such a long time to make their presentations I will merely state my objection now and have more to say later. So I object.

The PRESIDING OFFICER. The objection having been heard, the resolution will go over under the rule.

Mr. UDALL of New Mexico. Madam President, let me just inquire through the Parliamentarian, it is my understanding that by objecting to this resolution being immediately considered now, the result is the resolution will go over under the rule, allowing it to be available to be brought up at a future time. Is that understanding correct?

The PRESIDING OFFICER. That is correct.

Mr. UDALL of New Mexico. Thank you very much.

Madam President, I rise today to introduce the resolution I just mentioned. I have worked very hard with all of my colleagues, including my two colleagues from Iowa and Oregon, Senators HARKIN and MERKLEY, to reform the rules of this unique and prestigious body. I do so after coming to the floor last January—January 25, in fact, now almost 1 year ago—to issue a warning, a warning because of partisan rancor and the Senate's own incapacitating rules, that this body was failing to represent the best interests of the American people. The unprecedented abuse of the filibuster, of secret holds, and of other procedural tactics routinely prevent the Senate from getting its work done. It prevents us from doing the job the American people sent us here to do.

Since that day in January things haven't gotten better. In fact, I would