I close by thanking all those who have been in this conversation, certainly LAMAR ALEXANDER from the Republican Party and CHUCK SCHUMER, who have been working on rules to hold hearings to craft the structure for our leadership, our majority leader HARRY REID and our minority leader MITCH MCCONNELL, who have been in this conversation that has resulted in these steps forward that we are taking today. I applaud all the Members who have said that as Senators sworn to uphold the Constitution, they have an obligation to make the Senate a great deliberative body, something it once was, something it is not now but something that is in our hands to make happen again.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 1:01 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. SANDERS).

AMENDING THE STANDING RULES AND PROCEDURE OF THE SENATE—S. RES. 8, S. RES. 10, S. RES. 21, S. RES. 28, AND S. RES. 29—Continued

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I call up S. Res. 28, the Wyden-Grassley-McCaskill resolution to end secret holds.

The PRESIDING OFFICER. The resolution is pending.

Mr. WYDEN. Mr. President, with the passage of this resolution, no longer will it be possible for a Senator to engage in the unconscionable practice of secretly blocking a piece of legislation that affects millions and millions of Americans.

The fight for more sunshine in the way the Senate does business feels like it has been the longest running battle since the Trojan War. Today, after scores of battles, the cause of open government is going to prevail.

Over the years, Senator GRASSLEY and I, with the strong support of Senator MCCASKILL, have been able to secure leadership agreements to end secrecy. We have been able to pass amendments to end secrecy and send them to conference committees—where they would then magically disappear. We actually, at one time, got a watered-down version of our law passed. In each case, the defenders of secrecy have found a way to keep sunshine out and obstruct the public interest. When this proposal passes, we believe there will be real change.

There are three reasons why we believe our bipartisan proposal to end secret holds will be different from previous approaches.

First, now with any hold here in the Senate, there would be a public owner. Every single hold would have a Senator who is going to be held accountable for blocking a piece of legislation.

Second, there will be consequences. In the past, there have never been any consequences for the Senator who objected anonymously. In fact, the individuals who objected would usually send somebody else out to do their objecting for them, and they would be completely anonymous. Essentially, the person who would be doing the objecting would sort of say: I am not involved here. I am doing it for somebody else. So the entire Senate lacked transparency with respect to who was actually responsible.

Third, the Wyden-Grassley-McCaskill proposal would deal with all holds, whether they reach the point of an objection on the floor or are objected to when the bill or nomination is hotlined. Our approach requires objections to a hotline be publicly disclosed, even for bills or nominations that never get called up on the floor. This is a particularly important provision.

Senator GRASSLEY and Senator MCCASKILL feel very strongly about this as well because most holds never reach the point that there is an objection on the floor, and that is something I think has been lacking in this debate. They hear about discussions of people objecting on the floor. Most holds never reach that point. Typically, what happens is, a Senator who objects to a bill or nomination tells the Senator's leader that the matter should not be allowed to come up for a vote, and then the leader objects to bringing up the bill when it is hotlined. Because of that objection, the bill or nomination never actually gets called up on the floor. That type of hold effectively kills the bill or nomination long before it gets to the point of an objection on the floor. So we want to make it clear this is an important distinction and, for the first time, we would not just be talking about objections that are made on the floor.

I see my friend and colleague, Senator MCCASKILL, who has crusaded relentlessly for this. Senator GRASSLEY and I—I say to Senator MCCASKILL we sort of feel like we have been at it as part of the longest running battle since the Trojan War. I say to the Senator, your energy has been absolutely crucial in this fight.

I would also point out—and I think we know—the defenders of secrecy will always try to find a way around anything that passes. We think we have plugged the holes. We think we finally made the crucial differences. But the fact that the Senator has been such a relentless watchdog for the public interest, an opponent of secrecy, has been a tremendous contribution. I thank my colleague from Missouri and welcome her remarks.

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, very briefly, I am proud to join Senator GRASSLEY and Senator WYDEN in their long crusade on this issue. I am giddy, frankly. I cannot believe it. I cannot believe we are this close to amending the Senate rules by a wide margin. I will predict this will be a very lopsided vote, which is ironic. I do not think there has ever been anything that has taken as long as this has that is going to win by as big a margin as this is going to win because people were stubborn about holding on to their secrecy. It is a lot easier to do business, a lot easier to get your deals if you do not have to be public about it.

So there are very few things that you can grab a hold of in the Senate and actually see to the finish line, and I believe this will be the finish line. But let me say one warning. If anyone thinks they can figure out a way around this, all of us who have worked on this are not going to give up. So 6 months from now, if something is not moving and no one knows why and we figure out that one person has decided to own the holds, such as the minority leader—I will just own all the holds—that is not going to work, because we will come right back and we will point out to the American public: Believe it or not, they are trying to get around this rule.

So a warning to everyone: If we are going to amend the rule, be prepared to live by it because it is the right thing to do. I think our stock will rise with the American people. I think the transparency is essential.

I am very proud that it appears—I will keep my fingers and toes crossed because it has not happened yet—we have bipartisan agreement that this nonsense is going to end.

I wish to thank my colleague from Tennessee, Senator ALEXANDER, because I think he has been essential in these negotiations as it has related to an amending of the rules as it relates to the secret holds.

Thank you, Mr. President. I yield the floor.

Mr. WYDEN. Mr. President, I thank our colleague, our invaluable ally in this fight.

Senator GRASSLEY, I believe, is on his way. But the Senator from Tennessee has had many discussions on this topic with me and other Senators, and I wish to thank him for all the time and effort he has put into it. I yield him whatever time he would like.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, Senator GRASSLEY and Senator WYDEN and more recently Senator MCCASKILL, have pointed out the obvious fact that so-called holds that Members of the Senate place on nominations or legislation should be public. I think that is a good idea. That has bipartisan support. I believe today we will change the rules to make that clear, and I congratulate Senators WYDEN, GRASSLEY, and MCCASKILL for their perseverance and persistence in pushing this ahead.

I have always been glad to be public with my holds. I remember when Senator REID filibustered my TVA nominee by putting a hold on him, so I filibustered one of his Nevada citizens by putting a hold on him. Then we were able to work it out. But Senator REID and I made our objections public. I knew what he was doing and he knew what I was doing. That is important to build confidence in the Senate.

Senator GRASSLEY is on his way over and he has been the partner with Senator WYDEN on reforming holds for some time. I would like to say to Senators WYDEN and MCCASKILL and others—as I have already said to Senators UDALL and MERKLEY—that the efforts they have made to change the rules of the Senate have created a window of opportunity which I believe those of us on both sides of the aisle believe will make the Senate a better functioning forum. These Senators will not succeed in all the changes they are seeking to make but this window of opportunity will allow the Senate to better function as a place to discuss serious issues.

The majority leader and the Republican leader earlier today said they were going to do their best to see that most bills come to the floor after first going to committee. Then once bills get here we will have amendments. I think that is what most of us want. We want a chance to represent the views we have and those we are elected to represent. Sometimes our views are in the minority. Sometimes we are very solitary with our views. Maybe we are the only one who has a particular view. But we want a chance to be heard and a chance to offer amendments to express our views.

I think we are preserving the Senate as a forum in which that can be done, but at the same time we are making it a more effective place in which to do that. I congratulate Senator WYDEN and his colleague, Senator GRASSLEY, and others for their efforts.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, while we wait for Senator GRASSLEY, who, as Senator ALEXANDER has mentioned, has been relentlessly pursuing this with us for years—again and again, Senator GRASSLEY would come to the floor and make the point that a Senator simply ought to have the guts, just ought to have the guts, to stand and say: Look, this is important to me. I am the individual who ought to be held accountable. Senator GRASSLEY, in that inimitable Midwestern way, always manages to get these issues down to what they are truly all about. It is about accountability and, as Senator GRASSLEY says, it is about guts.

I would also mention, what is striking about the secret hold is this astounding power. I think it is only fair to describe it that way. I know of few powers that an elected official has that resemble the ability to anonymously block a bill or a nomination that affects millions of people. It is an astounding power, and for years and years it has never been written down anywhere.

As part of the ethics legislation that was passed a few years ago, we were able to get a watered-down version of secret holds reform in there. But literally to think that a power such as this—so sweeping, almost unrivaled in terms of the powers an elected official has—could be exercised in secret is something worth reflecting about in and of itself.

I will also tell colleagues that for those who want to get into the history of this, there are all kinds of holds. There was the revolving hold. There were a number of different ones. But my favorite over time was the ''Mae West'' hold, which came to also be known as the ''come look me over'' hold, which was almost as if a Senator was declaring that they were not sure what they wanted to do with their hold, but somebody ought to come up and see them sometime.

It just goes to show you, these kinds of practices—and this is what has been good about the work done by Senator SCHUMER and Senator ALEXANDER, my friend and colleague from Oregon, Senator MERKLEY, and Senator UDALL, which has been so important—because, for the first time, they have brought out into real debate what these rules are all about. My hope is, this will just be the beginning of the discussion about how, in the days ahead, it will be possible to bring more sunshine and more transparency to the Senate.

But Senator GRASSLEY, who has made this point in the past about doing business in public—that the principle at stake is accountability and transparency—has made the case for a long time and has additionally told Senators that since he—and there have been a number of us who have always put our holds in the CONGRESSIONAL RECORD; I have not used them very often. Senator GRASSLEY has made the point that colleagues will find, when they do it, it does not hurt at all. In fact, not only do they not suffer any detrimental consequences, but they do it and the public thinks more of them.

One final point as we wait for Senator GRASSLEY is that I am particularly interested in having holds reform enacted as part of our work today because the secret hold is a huge bonanza for the lobbyists. The lobbyists can, as we have seen year after year, go to a Senator and say: It would be a big favor to me if you would put a hold on something so we can get a little more time to have a chance to make our case. Sometimes we have competing lobbyists asking for secret holds, so we have one Senator putting a secret hold on a piece of legislation and making a whole array of lobbyists happy. Sunshine will be good for the Senate, and it will certainly be good because it will shine the hot light on some of these lobbyists' practices that we have been trying to discourage here on the floor of the Senate.

I have just been notified that Senator GRASSLEY is unavoidably detained. He is not going to make it to the floor at this time.

On behalf of myself, Senator GRASSLEY, and Senator MCCASKILL, at this time I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I first wish to commend Senator WYDEN, Senator GRASSLEY, and Senator MCCASKILL for their incredible determination to get this done. We thought we did it when our class of Senators came in. We thought we had gotten rid of the secret hold, but lo and behold, people found a way to work around it, and their determination has meant we are finally going to do this and we are going to do it right.

Secondly, I wish to thank Senator ALEXANDER as well as Senator SCHUMER of the Rules Committee for negotiating a number of these changes, as well as Senator REID and Senator MCCONNELL. When I think back over the last few months and what has happened, we had an incredibly productive lameduck session at the end of the last Congress. We all know there is a lot of work to be done, but in the closing months of this year, we showed people—I think to their surprise—that we could truly get some things done on a bipartisan basis. When the American people unite and see a clear issue—whether it was the nuclear arms treaty, whether it was the vote on the repeal of don't ask, don't tell, or whether it was the first responders after 9/11—and they see what is happening in this Chamber because they actually see a debate, they see someone standing up and making their points as the Presiding Officer does so well on so many issues, then they can make a decision. That is all we are talking about, when we talk about these sometimes complicated and convoluted rules changes, is getting things out in the open. Obviously, the first thing is to get rid of the secret holds and permanently end them.

The second important thing is filibuster reform. It is a longstanding tradition in the Senate that one Senator can, if she chooses, hold the floor to explain her objections to a bill. We always think of Jimmy Stewart's character Jefferson Smith in ''Mr. Smith Goes to Washington.'' This is where Senator UDALL—and by the way, I always think his voice sort of sounds like Jimmy Stewart—and Senator MERKLEY have done such a tremendous job of pushing these filibuster reform issues, as well as Senator TOM HARKIN, who has been working on this long before our group ever came to the Senate.

A group of us got together with the smart proposals made by Senators HARKIN, UDALL, and MERKLEY to determine the best reforms and what are the

ones we can truly get through; what is a package we can go to the other side of the aisle with and talk about what we need to do to get it done. The agreement that has been reached includes some of the important changes we want. The first I mentioned is to get rid of secret holds, but of course critical reforms to the filibuster are still necessary as far as I can see. One of the things I hope we reconsider as we go down this road is the idea that we could actually make people stand to filibuster, so that they are in this Chamber, they are discussing why it is so important that they hold up something, whether it is a judge, whether it is the assistant secretary of Oceanic Affairs, whether it is a major bill or a minor bill. People should be able to hear the arguments and then make their own decision. By the way, if they have a good argument for filibustering something or if a group of Senators has a good idea, the American people will say OK, I can understand why this is happening. If they are just doing it for reasons that don't make any sense to the people of this country, then they are going to be seen for what they are doing, and that is slowing down the progress of this country at a time when there are so many major issues we need to deal with in this Chamber.

So I am happy we have been able to reach agreement on a number of these important issues. It would not have happened without the determination of the people who are here today, and I look forward to more changes and agreements in the future.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I rise to continue the debate on this set of rule proposals, but specifically to talk about the talking filibuster.

There is one scene from an American movie that captures everyone's attention, and that is the scene of Jimmy Stewart here in the well of the Senate holding forth to make his case before his colleagues and before the American people to stop a corrupt act designed to destroy a camp for children. That is Jimmy Stewart in the role of Jefferson Smith in ''Mr. Smith Goes to Washington.'' He wasn't making some behind-the-scenes move, some backroom deal; he was out in front of the American people. That is why we have brought both the end of secret holds and the end of secret filibusters to the floor today.

The concept of the talking filibuster is that the American people believe when you filibuster, you are making a personal action, a courageous action, a public action, with personal time and energy, to stand up and say what you think needs to be said and to fight for what you need to fight for to make your State or this Nation or this world a better place. But this is not what the filibuster has become in modern times. Folks object to closing debate and they go off to dinner, have a glass of wine or two while they paralyze the Senate. It happened 136 times in the last 2 years. Each one of those filibusters proceeded to paralyze this body for a week, and yet those folks would not stand before the public here on the floor of the Senate and make their case.

The secret filibuster must go. It is an issue the American people understand, since they believe we will make our case before them when we wish to stall the Senate on an important issue. Let's make it so. Let's make it so with the vote that will take place here in this Chamber within the next couple of hours.

I wish to note that hundreds of thousands of people have signed petitions across this country. They have heard about this on the Web and other places. CREDO Action, Common Cause, Daily Kos and the Sierra Club, just those four groups generated almost 200,000 signatures calling for accountability, calling for transparency, calling for us to make our case before the American people so the American people can weigh in as to whether we are heroes or bums.

When we hold the vote on the talking filibuster today—I understand there has been a lot of pressure applied for there to be a unanimous party-line vote across the aisle against it. It troubles me. A number of our new Senators campaigned on transparency. They campaigned on accountability. They campaigned on changing the broken ways of Washington, and one of the first votes their leadership is asking them to do is toss away accountability, toss away transparency, and not help fix the broken Senate.

There are some who said we must make sure we protect the rights of the minority. The talking filibuster does exactly that. We still need 60 votes to close debate. My colleague from Oregon, Senator WYDEN, was just here. If there were an issue affecting Oregon that we must oppose, the two of us alone could take and hold this floor back and forth to make sure this body doesn't run over the rights of Oregon as long as we have the 40 colleagues with us to avoid cloture. That is the way it is now and that is the way it will be under the talking filibuster.

I am not going to belabor this. There are others who wish to speak and we want to hear them. But let me say this: When we have gotten to the point that we could not get a single appropriations bill done in 2010, when we cannot address 400 House bills that lie collecting dust on the floor, when we have 100 nominations in which we did not fulfill our constitutional responsibility to advise and consent, then we have a responsibility to work together to change the conduct of this Senate, to change the rules of this Senate, so those rules are not abused in a fashion that undermines our performance under the Constitution.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, the Senator from Oregon has talked about the number of nominations that couldn't be considered. I am sure the Senator from Oregon remembers that there cannot be a filibuster on a motion to proceed to a nomination. All the majority leader has to do is bring it up. You can't debate that. If he should bring up the motion to proceed to a nomination, and if a Senator over here or over there objected, then the motion can be put to a simple majority vote. When I was nominated by President George H.W. Bush to be Education Secretary, a secret hold was placed on my nomination. Senator Metzenbaum, as it turned out, had a hold on my nomination for 3 months when all it would have taken for me to be confirmed was for the majority leader to bring my name to the floor. Then if we had gotten 60 votes for it, we could have debated for 30 hours and had a final vote on my nomination.

What would happen during the 30 hours? We don't have Senators going out to dinner except on the other side of the aisle. Because under the current rules, in those 30 hours, one Senator gets 7 hours to speak. We know a Senator can do that because a distinguished Senator from Vermont demonstrated very capably that he was capable of doing that not long ago. He did a great job. People all over the country saw it, wrote him, and he became a little bit of a celebrity for that day. Senators are still capable of that. But if a Senator had wanted to take the whole 30 hours in a postcloture period, he then has to get 23 more Senators to join him in taking an hour of that 30 hours. Without getting into the complications of it, if Senators fail to talk, then the majority leader can say those are dilatory tactics and force any Senator who wants to extend the debate to be very uncomfortable. That Senator would have to get up to 23 Senators to come join him at some time during the speech and take 7 hours himself. The reason why that hasn't been done is because the majority didn't want to do it.

Now I am not just saying that. The master of the Senate rules, Senator Byrd, said it in his last testimony before our Rules Committee last May.

He said this:

> Forceful confrontation to a threat to filibuster is undoubtedly the antidote to the malady.

Senator Byrd was talking about what some considered the abuse of a filibuster. Most recently, before he died, Senator Byrd said:

> 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 a filibuster was withdrawn. I heartily commend the majority leader for this progress, and I strongly caution my colleagues as some propose to alter the rules to severely limit the ability of a minority to conduct a filibuster.
>
> I know what it is to be majority leader, and wake up on a Wednesday morning in November, and find yourself a minority leader.

Senator Byrd said the Senate rules provide the means to break a filibuster. He went on to describe that.

Mr. President, I don't want to suggest to the distinguished whip, who knows the rules of the Senate much better than I, or to HARRY REID, the majority leader, how to break a filibuster that he thinks is an abuse. But they know how to do it. That takes a little trouble. You cannot go out to dinner and have a glass of wine, as the Senator from Oregon was talking about. You have to sit on that side of the floor and have 50 Senators ready. You can sit there and say: I would like for the Senator from Tennessee to assert himself. And you can stay all night. I imagine if you do that once or twice, or if we voted on more than zero Fridays, which was the number of Fridays we voted on last year, you could confront filibusters.

Mr. DURBIN. Will the Senator yield for a question?

Mr. ALEXANDER. After I finish my sentence, I will yield the floor to the Senator from Illinois.

I say to my friends, what we are trying to do today is to move past this time where we point out that the majority leader has cut off our right to amend and debate six times more than recent majority leaders. That is what gets everybody stirred up over here. It is like telling us we can join the Grand Ole Opry, but we can't sing.

We are here to let people know what the people in Tennessee and other States think. We might be in the minority, but we are in the Senate where the minority is supposed to have a voice.

When, time after time, you bring a bill to the floor and cut it off, and you call that a filibuster—that is why we are upset. You are upset because as a result of that you didn't get to bring as many bills to the floor as you would like. We are trying to put that all behind us today. This window of opportunity has produced what I think is important. These rules changes we are going to adopt are good and will move us in the right direction.

The real value of this whole effort has been to cause us to think about how the Senate operates and realize the best way to do it is for most bills to go to committee, come to the floor, and for most Senators to get to offer most of the amendments they want to offer and get them voted on. We might have to vote on a Friday—maybe even a Thursday night or maybe even a Saturday. It might be that the majority has to confront a filibuster by saying: Senator so-and-so, if you are going to slow us down, we are going to make you use that 30 hours. You are going to have to talk your 7 hours and get 23 other Senators, and we are going to be here to see that you do it.

My guess would be that you do that about once, maybe twice, and that would end that particular problem. My real guess is if this general attitude that the majority and minority leaders talked about earlier today occurs, then you will see very few uses of the filibusters you think are inappropriate. The Leaders described an attitude which is that we are going to do our best to see that most bills come to the floor, that most Senators get to offer the amendments they want, and that Senators get the votes on those amendments they want. If you think inappropriate filibusters are occurring, according to Senator Byrd, you have the means to confront them.

My hope is that this whole exercise not only is producing some rules changes that are valuable but a change in behavior on both sides of the aisle which will be valuable. We will wait and see.

I am happy to yield to my friend from Illinois.

Mr. DURBIN. Mr. President, I see others standing. I will be brief and just say a few words in support of the so-called talking filibuster. In the world of the most arcane things that people can concentrate on, this book would be on the top 10 best-seller list. It is the Senate Manual with the rules of procedure and the rules of precedents of the Senate. Unless you live here and work here and follow the Senate, most people never, ever have any glancing occasion to even observe these rules, let alone pay any attention to them.

Why are we doing this when we have all these people unemployed in America and we have so many challenges at home and abroad? Why are we taking the time of the Senate to talk about this book and the rules included? Many of us, including my friend—and that term is sometimes used loosely here but I mean it literally, know what happens on the floor of the Senate has an effect on America and the world. If we do our job well, we are going to solve some of the problems of the world. If we do it poorly, the exact opposite is the case.

What my colleagues from Colorado and Oregon and New Mexico have urged us to do is to think about whether we can do things better in the Senate. The history of the filibuster in the Senate is an interesting one. There was a time when any Senator could stand up and object and stop the proceedings of the Senate. Then Woodrow Wilson, as President, suggested that we should arm the Merchant Marine so that our ships could fire back if the Germans and others fired at them. He asked for legal authority for that. He brought that issue to the Senate before World War I, and two or three pacifist Senators stood up and said: No, we don't want these ships to have guns because that will drag us into a war.

At that point, Wilson said: I want to take that issue to the American people. Three Senators should not be able to stop that from a vote. He got his way.

At the end of the day, the rule was initiated—the cloture rule—that said two-thirds of the body could decide to move forward even if one or more Senators objected. That cloture rule of two-thirds guided the Senate until the 1960s, and the civil rights debate ended up amending that rule from 67, under that day's count, to 60. So 60 has been the guiding way to end a filibuster. It has been that way the entire time I and the Senator from Tennessee have served in the Senate.

What is being suggested is fundamental. I would at least say I disagree in principle with the Senator from Tennessee, respectfully, and here is what I believe. I think the movants of this idea believe this: If the Senator from Tennessee believes in his heart of hearts that something is so bad, so controversial, so wrong that he wants to stop the business of the Senate in considering and debating an amendment or a bill—if he feels that strongly about the value or principle that would lead him to want to stop the Senate, what we are being told is that he ought to be willing to stand here and say why.

Currently, you can initiate a filibuster and close down the Senate, where for 30 hours nothing happens except the drone—the lovely drone—of quorum calls. People across America tune in and say: What is happening there? Are they going to actually pay these men and women for doing nothing another day?

A person who initiates a filibuster can literally leave the floor and head out for dinner, and the Senate is stopped cold. What is being suggested is that if you believe it, if it is important enough to stop the business of the Senate, for goodness' sakes, stand up and tell us why. Defend yourself. Stand up for your principles.

I remind the Senator from Tennessee—I think he was a Member at this time—that one of our colleagues, who will go unnamed but is from his side of the aisle, initiated a filibuster once which forced us to come in on a Saturday—as you say, it is a rare occurrence here—and to be here and have over 60 votes because of his filibuster. That Senator didn't show up. He initiated the filibuster and didn't stick around. He was asked later about it, and he said: I had something important to do back home.

Mr. ALEXANDER. Will the Senator yield for a question?

Mr. DURBIN. After I explain my position I will.

That is a classic illustration of someone who initiates a filibuster and then takes a powder—goes out to dinner or goes home to attend an event and says: Just let the Senate burn up 30 hours. I will be back later.

What we are hearing is that it is better to say to that Senator, if it means that much to stop the Senate it should mean enough for that Senator and that Senator's colleagues to stand up and fight for that right. Is it worth it? Will the Senator at least take the floor and speak to it?

The Senator from Tennessee says there is a better way: to force the entire Senate, during a filibuster, to be

here—all of us. So any one Senator can change and affect the lives of all Senators by saying we are going to stay all night. We will have live quorum calls and we will sleep on cots in the marble room, and that is the way to stop the filibuster. Think about that, I say to my friend from Tennessee. Is this a punishment to the person who initiates the filibuster? Does it even put responsibility on the person who initiates it? The answer is clearly no. The burden, under the defense of your position, falls on the entire Senate to sit here all night long because one Senator objects.

I think this talking filibuster is much more reasonable. If it means enough to object to the Senate moving forward on the debate of an amendment or a bill, then, for goodness' sakes, have the courage and be open enough to stand at your desk and defend your position. That is not unreasonable. If you find that you cannot hold a number of colleagues to your position, let's move on. If you don't want to stand and debate the issue but want to go out to dinner with your buddies, fine. But don't stop the Senate while you are on your way to a nice dinner—not you personally, but the person who would move the filibuster.

I support the talking filibuster, not because of Jimmy Stewart, who created this mental image, but I think the principle is sound and what our colleagues recommend would help the Senate.

Mr. ALEXANDER. Mr. President, since the distinguished whip has apparently renamed this amendment the ''which side of the aisle goes out to dinner'' amendment, let me ask him this: Isn't it true that if your side didn't go out to dinner—since you asked to be elected to the Senate, you raised a lot of money, and you worked hard and defeated some Republican to get here—if you really think somebody over here is abusing their minority rights by filibustering, then why would you go out to dinner, and why would you not want to be here and hear that person talk and respond to him? Why would you not do that?

Isn't it true that Senator Byrd said that forceful confrontation to the threat of a filibuster is undoubtedly the antidote to the malady? He did not want us tampering with this 60-vote procedure we have that forces consensus.

My question to the majority whip is this: Why did you go out to dinner so often—through the Chair—when instead, you could have been here, under the rules as Senator Byrd suggested, dealing with abuses to the filibuster or what you consider they were?

Mr. DURBIN. The obvious question is, what do we accomplish by staying here all night? Every 15 minutes or every hour the majority leader could ask for a live quorum and Members could be asked to come vote. If they don't, their voting record would reflect that. So the body would pay the price of applying pressure—the confrontation that Senator Byrd speaks of.

What the Senators proposing this suggest is that the person who wants to stop the Senate should have the burden of explaining why or standing and defending his or her position. I don't think that is unreasonable.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. MERKLEY. Mr. President, I want to correct the record on something that has been said on the other side of the aisle; that is, the abuse of the filibuster has been a response to filling the tree. In the last 2 years, we had the tree filled once. We had 33 filibusters. In response to those filibusters, the tree was filled 9 times. We had 34 filibusters, the tree filled 6 times, and a filibuster 36 times. Obviously, 36 times was not a response to 6 times filling the tree.

That myth created by the opposing side is actually a myth. So while it is a convenient argument, it happens to be a wrong one. I think that is important to know.

I also wish to note that my colleague from Tennessee was talking about postcloture discussions for 30 hours, thereby confusing the conversation about the filibuster on the motion to proceed, the filibuster on amendments, the filibuster on a bill with a 30-hour requirement on nominations. Actually, we had a proposal to reduce those 30 hours to 2 hours. That proposal is in S. Res. 10 that will be voted on today.

I do hope my colleague, in support of the principle he was putting out, which is that those hours should be reduced, will support S. Res. 10, noting that is a very logical way to reduce the delay of the Senate.

My colleagues wish to speak. I will close with this comment: If you have the courage of your convictions and you want to exercise the privilege of shutting down the Senate for a week, then stand up and make yourself accountable to the American people.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. Mr. President, I rise to speak on a particular proposal we will consider later today, but I wish to associate myself with the Senator from Oregon, who has been tireless in pushing for commonsense reforms in the way the Senate operates.

The majority whip made the comment in his remarks before the Senator from Oregon spoke that we want to make these changes so the Senate can respond to the changing nature of the world around us and in particular focus on our economy and getting Americans back to work. If the Senate is tied in knots, we are not going to put the policies in place that these stalwart, committed Senators, including the Senator from Iowa, Mr. HARKIN, and the Senator from New Mexico, Mr. UDALL, so compellingly presented to us.

I know there are others who wish to speak, so I will briefly speak to the proposal I have submitted that would bring us a step closer to fixing some of the redundancy in the rules that slow down our progress here and I think ultimately make not just our constituents in our individual States frustrated but Americans all across our country. Put simply, this proposal would encourage Senators to file their amendments 72 hours in advance of a vote to ensure we all have a chance to review that amendment. But then it would also discourage the practice of delaying a final vote by calling for an outloud reading of the amendment. I have heard concerns from Members of both parties about this particular practice. We all want to have an opportunity to read the provisions in amendments and broader bills, but it has become increasingly obvious to me that we need to make changes in our rules, as I said, to ensure the process works smoothly.

My proposal would encourage Senators to file amendments 72 hours in advance, and it would prevent any Senators from creating a logjam on the Senate floor by forcing the text of that amendment to be read aloud if it is made available in advance.

Mr. President, you and I have been around long enough to know that in the days before copy machines and the Internet, if one was serving in the Senate, it was probably helpful to sit here and hear the text of each amendment read out loud. That practice is outdated, and it is not the way the Senate operates today. Instead, our technology allows us instant access to the text of amendments, and therefore there is no crucial need to hear them read aloud at the last minute. Most of the time, in fact, we just waive the reading and move to the final vote. When a full reading, however, has been forced, it largely brings this place to a halt, as Senator DURBIN pointed out earlier. The effect has been to tie the Senate in knots, and it creates a spectacle when the hard-working clerks, who are actually the people who make this Senate run, have to stand here and read amendments, sometimes for hours, to an empty Chamber. That said, there have been cases in which one party believes the text of a rather large amendment has been withheld from them in order to deny them adequate time to review it. I do not want to take that power away from the minority to reasonably voice their opinions on the floor to get the information they need, which is why my proposal is a balanced way of fixing the Senate rules.

This resolution is designed to help us find common ground and prevent needless delays by allowing us to prevent the live reading of an amendment when the text has been available long enough for everyone to have studied it in advance. Instead of allowing an individual Senator to put the Senate on hold literally for hours by forcing an amendment to be read, a simple majority of Senators would be able to collectively vote to dispense with the reading, provided that it was filed on time. This is a commonsense approach. It seeks to address the concerns of those

who want more time to read amendments and those who see the forced reading of amendments as needlessly obstructive. It is a simple approach, and I believe later today the Senate will approve such a rules change.

In ending my remarks, I wish to acknowledge the work of Chairman SCHUMER and Senator ALEXANDER. There is an agreement, as I understand it, and we will vote on it later today. I applaud their work and offer my very sincere thanks.

I also acknowledge Leader REID and Leader MCCONNELL for helping bring this package to the floor today and for reaching their own agreement on how to improve the way the Senate works.

Finally, as I did in my beginning remarks, I wish to acknowledge Senator TOM HARKIN, Senator TOM UDALL, and Senator JEFF MERKLEY for bringing true attention to a concern so many Americans have had on this particular issue. Senator MERKLEY and Senator DURBIN spoke to the fact that this may seem an obscure topic to many constituents. This is historic progress we are going to make today that ultimately will make the Senate function together. I know that is the mission of these three outstanding Senators.

I ask unanimous consent that Senator MERKLEY be listed as a cosponsor of the resolution I am offering today.

The PRESIDING OFFICER (Mrs. MCCASKILL). Without objection, it is so ordered.

Mr. UDALL of Colorado. Madam President, I close on this note: I urge my colleagues to vote for the simple commonsense reform of the Senate rules.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I rise to support the Wyden-Grassley-McCaskill public hold proposal. I apologize to my two colleagues from Oregon and Missouri that I was not on the floor at the proper time. It is all my fault.

I am pleased to see this day come where the Senate will finally have the opportunity for an up-or-down vote on our freestanding Senate resolution to require public disclosure of holds. Senator WYDEN and I have been at this for a long time. We have made progress at times, and we have also had many disappointments where things did not quite work out the way we had hoped and what we thought the Senate had spoken on through even rollcall votes.

It has also been good to have Senator MCCASKILL join us in helping push this issue to the forefront easily. She did that—I shouldn't say ''easily'' but recently because it has not been easy. Ending secret holds seems like a simple matter, doesn't it. But that has not proved to be the case because secret holds are an informal process. It is easier said than done to push them out into the open using formal Senate procedures. It is kind of like trying to wrestle down a greased hog. However, after a lot of thought and effort, two committee hearings, and many careful revisions, I think this resolution does a pretty good job of accomplishing our simple goal. That goal is to bring some more transparency into how the Senate does its business and, with transparency, more accountability.

This is not the only proposal we are considering today related to Senate procedure, and I do not want there to be any confusion. This proposal is not about altering any balance of power between the majority party and the minority party; neither does our resolution alter the rights of any of the 100 Members of this Senate.

Over the time I have been working on this issue, I have occasionally encountered arguments purporting to defend the need for secret holds. However, the arguments invariably focus on the legitimacy of holds, not on the subject of secrecy. I want to be very clear that secrecy is my only target and the only thing this resolution eliminates. I fully support the fundamental right of individual Senators to hold or withhold his or her consent when unanimous consent is requested. Senators are not obligated to give their consent to anything they do not want to, and no Senator is entitled to get any other Senator's consent to their motion.

I think the best way to describe what we seek to do with this resolution is to explain historically how holds came into being, as Senators have heard me do before.

In the old days, when Senators conducted much of their business in a daily way from their desks on the Senate floor, it was a simple matter to stand up and say ''I object'' when necessary. These days, most Senators spend most of their time off the Senate floor. We are required to spend time in committee hearings, meetings with constituents, and attending to other duties that keep us away from this Chamber. As a result, we rely on our respective party leaders in the Senate to protect our rights and prerogatives as individual Senators by asking them to object on our behalf.

Just as any Senator has the right to stand up on the Senate floor and publicly say ''I object,'' it is perfectly legitimate to ask another Senator to object on our behalf if we cannot make it to the floor when consent is requested. By the same token, Senators have no inherent right to have others object on their behalf while keeping their identity secret. If a Senator has a legitimate reason to object to proceeding to a bill or nominee, then he or she ought to have the guts to do so publicly.

We need have no fear of being held accountable by our constituents if we are acting in their interest as we were elected to do. Transparency is essential for accountability, and accountability is an essential component of our constitutional system. Transparency and accountability are also vital for the public to have faith in their government. As I have said many times, the people's business ought to be done in public. In my view, that principle is at stake.

I see my colleague from Oregon. If he will indulge me, I ask unanimous consent to engage in a colloquy with the Senator from Oregon to get his thoughts as well.

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

Mr. WYDEN. Madam President, as Senator GRASSLEY has said, Senator GRASSLEY, Senator MCCASKILL, and I have always maintained that there is no legitimate reason for Senators to keep holds they have placed with their leaders secret for any period of time. In fact, for quite some time, we have made a practice of immediately disclosing any hold we place in the CONGRESSIONAL RECORD, and that has been at the heart of our resolution, in my judgment. Would my friend from Iowa agree?

Mr. GRASSLEY. Absolutely correct. One of the defects of the watered-down secret holds provision that was included in the ethics reform bill in the 110th Congress was that it allowed for large windows of secrecy before disclosure was required. Our resolution states that the leaders shall recognize holds placed with them only if two conditions are met: if the Senator first submits the notice of intent to object in writing to the appropriate leader and grants in the notice of intent to object permission for the leader or designee to object in the Senator's name and, secondly, not later than 2 session days after submitting the notice of intent to object to the appropriate leader, submits a copy of the notice of intent to object to the CONGRESSIONAL RECORD and to the legislative clerk for inclusion in the applicable calendar section.

Mr. WYDEN. I thank the Senator because I think that is an important point because the bipartisan resolution clearly establishes the responsibility of all Senators to go public with their holds and the understanding that the leaders will not honor secret holds.

In addition, a concern that has been expressed is the lack of an enforcement mechanism in case there is a breakdown in this process, that it does not work as intended. Will the Senator from Iowa address that point? I believe our resolution addresses that concern as well.

Mr. GRASSLEY. It certainly does. Even if the process we talked about is not followed, once a hold comes to light in the form of an objection, someone will be required to own up to that hold. It will no longer be possible for a leader or their designee to object but claim it is not their objection. They can say on whose behalf they are objecting and why not.

We also require Senators placing a hold to give their permission to object in their name. Still, if a Senator objects and does not name another Senator as having the objection, and another Senator does not promptly come

forward claiming the objection, the Senator making the objection will be listed in the relative section of the Senate calendar as having placed that hold.

I yield, for a final conclusion, to the Senator from Oregon.

Mr. WYDEN. I thank the Senator from Iowa, because with this colloquy he has laid it out very well. The fact is we have been at this so that it sometimes feels as though it has been the longest running battle since the Trojan War, given the fact we have had leadership agreements, we have had amendments, and we have had a watered-down version of the law. Today, we finally have an opportunity to ensure this unconscionable practice of secrecy that keeps the American people, millions of Americans, from learning about who is blocking a bill or a nomination, and that practice is finally eliminated, and I thank my colleague. It has been a long fight and a pleasure to work with my friend from Iowa and to have the energy and enthusiasm of Senator MCCASKILL, who has given this cause a huge push.

Madam President, I ask unanimous consent to add Senator MERKLEY as a cosponsor to the bipartisan Senate resolution eliminating secret holds.

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

Mr. WYDEN. I appreciate the hard work of the leadership and my partners in this effort, Senator GRASSLEY and Senator MCCASKILL. We would not be here today without them. We have a strong, bipartisan bill that will bring greater transparency to the process of holds.

There are a few matters that we wanted to clarify to ensure there is no confusion during the implementation. First, subsection (d) notes that when a Senator makes an objection, but within 2 session days, no Senator submits a Notice of Intent to Object to the Record, then the clerk should add to the Notice of Intent to Object calendar the name of the Senator who actually made the objection. Obviously, the calendar should also note the name of the matter actually objected to, as well as the date that the objection was made on the floor. Is that my colleague's understanding, as well?

Mr. GRASSLEY. My colleague is correct and that is pretty straightforward. The Notice of Intent to Object calendar should reflect all of the matter necessary to understand holds. If no other Senator has come forth and claimed the objection, then the Senator who actually made the objection should be credited with holding the matter objected to. It is also worth noting that this approach saves a Senator who actually made an open objection on the floor on his or her own behalf the trouble of filing the ''Notice of Intent to Object'' with the clerk.

Mr. WYDEN. Yes, the Senator from Iowa makes a good point. Our resolution turns the Notice of Intent to Object calendar into a one-stop shop for recording information about objections made to covered requests. At the same time, some have asked us—what happens if a matter that had been objected to later passes? Shouldn't the clerk just remove the relevant information from the Notice of Intent to Object calendar in that situation? It seems to me that makes sense and such action by the clerk would be keeping with the intent of our resolution.

Mr. GRASSLEY. I agree. If something has passed the Senate, then obviously it is not being held. The Notice of Intent to Object calendar should be updated to reflect that development. Some of my colleagues have raised another small wrinkle on this issue with me—what if the matter passes after an objection has been made but before the 2 session days have elapsed? It seems to me that in that case, the clerk does not need to go through the ministerial motion of adding an item to the Notice of Intent to Object calendar, only to immediately remove it. Again, if a matter has passed the Senate, there obviously is no hold.

Mr. WYDEN. That seems like a commonsense approach to me. I thank my colleague for his help on secret holds. We are achieving a big victory for transparency at the beginning of this Congress.

Mr. GRASSLEY. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, people across this country are feeling pressures from so many points of view—job loss, threatened losses in the future as pressure exists on businesses, particularly small businesses across our country. They look to us in the Senate and in the House to help them solve their problems, but what they have seen has resulted in an attitude, to a certain degree, of disdain about those of us who serve in the Senate and the House of Representatives. The reason it has developed that way is because they think we are not doing our job. If they watch television or listen to what is going on, it further confirms the fact they have in mind that we are not doing our jobs; that we are wasting time; that we are not paying attention to the country's needs.

That kind of a picture is appropriately formed, with the situation as it is. The Senate has been a roadblock to progress in our country. I salute my colleagues, Senators UDALL of New Mexico and MERKLEY of Oregon, for the work they are doing, and the others who are associated with it, and I commend the Senator from Tennessee on the other side for his willingness, for his interest in establishing a consensus of view about how we can improve the functioning of our body. I salute him and commend him for it, and I have mentioned that to him privately. We have all been wrestling with this problem. But finally, I think we are coming to a time when we can solve it.

I have spent the past year trying to improve Senate rules so we improve our functioning; that we show the people in the country we are actively trying to solve their problems, and they will understand that when they see people on the floor debating the issues and not seeing a clock working without any action to support it.

Last year, and again this month, I introduced the Mr. Smith Act, to require filibustering Senators to come to the floor and actually filibuster. The filibuster is a right that is reserved for Senators when they object to a piece of legislation that we are dealing with, and if they are able to get the floor, to keep it until such time as 60 votes develop, which says, let us end this debate. So we know that at the moment that is a tool the minority has used regularly and it brings the Senate to a halt. But if the plurality—the majority—shifts, the same thing is liable to happen but with the Democrats then using the filibuster for dilatory reasons.

What we are going to do will make the body more transparent. It will reduce the practice of grinding the Senate to a halt for no good reason. Today, we will have the opportunity to vote on a couple of resolutions that include proposals based on the Mr. Smith Act. Everybody knows what the Mr. Smith situation was. Jimmy Stewart came to Washington and he stood for hours—an unimaginable length of time—to try to get something done. It was a heroic gesture and it has lasted as an icon for the American people.

Like my bill, which we entitled the Mr. Smith bill, the proposals put forward by Senators MERKLEY and UDALL come down to a simple idea: Senators who want to delay action on a bill or a nomination must stand up here and explain why we are delaying responding to the needs of the American people. An empty Senate Chamber can't help put Americans back to work, protect people from dangerous weapons, or improve our country's schools. We can't invest in our railways, roads and bridges, other infrastructure needs, and help struggling Americans to stay in their homes if there is no Senator willing—sent here after, I am sure in every case, an arduous election, even though the numbers might not say that—to debate the issues. Why aren't they at work? We would have no tolerance for schoolchildren if they continued in their absence from their classrooms doing their homework. Why in the Senate should it be allowed without intervention?

We want people to be able to see that there are Senators in this Chamber debating the issues; that they are not clock watching and doing nothing to take care of the needs of the country. We are not making progress on vital issues because the rules of the Senate are being abused. Some of our colleagues are conducting silent filibusters, which is a disguise for inaction. Under these silent filibusters, Senators are allowed to object to a bill or a nomination without ever having to defend

their position. Instead of explaining to their colleagues and the American people why they oppose a bill, they are able to skip off to dinner, leaving this Chamber to total gridlock. Is it any wonder so many Americans have such a low opinion of Congress? When people look at the Senate and they see us stuck in a morass of dilatory activities, they do not appreciate it, they do not like it, and they want action. They want the people whom they have sent here, whom they voted for, whom they depend upon, to do something on their behalf. If there is a disagreement about whether one path is right, they will understand that at least we are trying to do something.

That is why I have spent so many months in trying to improve the way we conduct business. Passing these resolutions today will assure the American people that we are here to do their business.

In addition to the Merkley-Udall resolutions, we will be voting on other important reforms to the Senate rules today. For example, I support the measure of the Senator from Oregon, Senator WYDEN, to end secret holds, because the American people, again, deserve to know who is holding up important legislation. Transparency is something we talk about constantly around here. Yet we are not willing to put it in front of the people. This is a much-needed reform.

But we need to do more to make the Senate a more effective and more efficient Chamber. The Senate—and I have been here a long time—was once known as the world's greatest deliberative body. At some point we decided—some years ago—that in order to bring the message more clearly to the American people we would allow television cameras to be here so the American people could watch us at work. They could see us at work—maybe even call it supervise us at work. Well, when they see a beautiful facility such as the Senate Chamber with no action going on, it gets to be quite depressing as far as they are concerned, and as far as we here are generally concerned.

As I said, the Senate was known as the world's greatest deliberative body—the place where national conversations began and the major issues of the day were debated. Many of my colleagues and I want to see the Senate regain the respect of the American people and restore our reputation for serious debate and civil discourse, but we will never achieve this if we continue to allow our own rules to be abused. So I urge my friends and colleagues to join in supporting these resolutions, because if we want to help the American people get back to work, if we want to restore their confidence, if we want to let them know government is here to help and not delay, then we have to get back to work too. The fact is time is being spent, but it is not being spent on behalf of progress for the country.

With that, Madam President, I yield the floor, and I thank my colleague from Iowa, Senator HARKIN, who agreed to let me intervene with my remarks before he spoke at the time that was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

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

Mr. HARKIN. Madam President, exactly 16 years ago, in January of 1995, for the first time in 8 years I found myself as a member of the minority party here in the Senate. At the beginning of that Congress, Republicans outnumbered Democrats 53 to 47; the exact same majority-to-minority ratio that exists today, just in reverse order. Yet even though I was opposed at that time to the majority party's agenda, I introduced legislation to change the Senate rules regarding the filibuster.

My plan would have ensured ample debate and deliberation, which I always hear is the stated purpose of the filibuster, but would also have allowed a bill or a nominee to eventually receive a yes-or-no vote. Again, my proposal didn't pass.

I first proposed this at a conference of our Democratic Senators that was held in 1994, because at that time I saw and I predicted—and it is in the CONGRESSIONAL RECORD that I had predicted this at that time—there was an escalating use of the filibuster that was being used not for debate purposes, not just to slow things down, but to actually provide for a veto of pending legislation by the minority.

I predicted, at that time, if this arms race were not nipped in the bud, it would escalate because it had been escalating since the 1980s. Democrats were in power. Republicans would have X number of filibusters, and then when the Republicans were in power, the Democrats would do the same to the Republicans. Then the Republicans would come back in power and the Democrats would do the same to them and back and forth, but each time it escalated—an escalating arms race.

I predicted, at that time, if we did not do something about it, it was going to get worse. Unfortunately, my prediction became all too true. In the intervening years, because of the extraordinary use of the filibuster, the ability of our government to legislate and to address the critical problems has been severely jeopardized.

Sixteen years after I first introduced my proposal, it is even more apparent that for our government to properly function, we must reform the use of the filibuster. There are those who have criticized me and argued that Senator HARKIN would not be doing this if he were in the minority. Well, again, that is not true. I repeat. In 1995, when I was a member of the minority party, I first introduced my proposal.

The truth is, in the future, whether the Chamber is controlled by Democrats or Republicans, I will continue to work to accomplish a couple things. One, to provide that if there is going to be a filibuster, that it is a real filibuster; that the filibuster is used to slow down processes, to give the minority ample time to debate and discuss and to amend, but in the end the majority rule must come to the Senate.

I thank Senator SCHUMER and Senator ALEXANDER for the effort they made to negotiate a package of badly needed reforms. Of course, eliminating secret holds is long overdue. It is wrong that not only can the minority block the majority from acting, but, too often, it does it secretly and without any public accountability. So eliminating that and eliminating the confirmations of many low-level executive branch nominees I think is meaningful movement in the right direction.

While I fully support these steps, they are far from the meaningful reforms that I think are essential to make the Senate a properly functioning legislative body. Keep in mind, we are a legislative body. The filibuster was once an extraordinary tool, used in the rarest of instances. Across the entire 19th century, there were only 23 filibusters. From 1917, when the Senate first adopted rules on this until 1969, there were fewer than 50 in that whole timespan—less than one a year.

During the 104th Congress, in 1995, when I first introduced my resolution, there were 82 filibusters. But it was not until the 110th and 111th Congresses that the abuse of the filibuster would spin wildly out of control. In the 110th Congress, there were an astonishing 139 motions to end filibusters. In the 111th Congress just ended, there were 136. That is 275 filibusters in just over 4 years. It has spun out of control.

This is not just a cold statistic of 275 filibusters. It means the filibuster, instead of a rare tool to slow things down, has become an everyday weapon of obstruction, of veto. On almost a daily basis, one Senator is able to use just the threat of a filibuster to stop bills from even coming to the floor for debate and amendment, let alone a final vote.

In the last Congress, the filibuster was used to kill many pieces of legislation that enjoyed majority and often bipartisan support. The reality is, because of the way the filibuster is abused today, the minority—the minority—has unchecked veto power over public policy. When I say minority, I do not say Republicans, I say the minority. It could be the Democrats, it could be the Republicans.

Think about this. We are a legislative body, elected by the voters of this country every 6 years to legislate, to pass legislation with the House, to send it to the President or to defeat legislation, one way or the other, through our votes.

But it would seem to me that reason alone—reason alone—would suffice to

say that legislation should be able to be passed with a majority vote. But that is not what has happened in the Senate. The power to pass legislation has been given to the minority. Reason alone would dictate there is something inherently wrong and inherently unconstitutional about this.

As James Madison noted when rejecting a supermajority requirement to pass legislation, here is what James Madison said: ''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 in the world—and I challenge anyone, I challenge anyone, to contradict me on this with proof—we are the only democratic body in the world where the minority, not the majority, controls.

In today's Senate, democracy, of which we all claim to be such strong supporters, 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 or responsibility.

This means, as we have seen recently, that the minority can block bills that would improve the economy, create jobs, and then turn around and blame the majority for not fixing the economy. The minority can block popular legislation, then accuse the majority of being ineffective.

Again, I wish to note that when I refer to the minority, I am not saying Republicans, I am saying the minority. 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 again at some point, as it always does periodically.

Some have argued that filibuster reform is nothing more than a ''power grab'' by a Democratic Senator reacting to the recent elections in which his party lost seats. I have heard that said. Well, it is true it is now harder for either party to obtain the 60 votes needed to pass legislation. But I wish 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.

I wish to repeat, I first introduced this in 1995 when I was in the minority. So as we say in law school, in the court of equity, I come with clean hands. The truth is, as it is situated right now with Republicans controlling the House, any final legislation will need to be bipartisan, with or without a filibuster.

Let me also say, again, that for a bill to become law, it has to be passed by the House and the Senate in the same form—in the same form. Then it must go to the President. The President can veto it and then it takes a two-thirds vote to override a veto. There are a lot of checks and balances out there. So the need for the check on legislation by the minority with the ultimate power to veto that is not needed—not needed; in fact, inimical to a democratic institution.

It was former majority leader Bill Frist who said, when he normally shut down the body over the use of filibusters to block a handful of judges, again by Democrats, ''This filibuster is nothing less than a formula for tyranny by the minority.''

Further, I wish to make it clear it is not those of us who seek reform who are engaged in a power grab. It is those who insist on hanging on to an antiquated rule who are grabbing for power. It is those who have taken an extraordinary tool, once used sparingly, to ensure ample debate and deliberation and turned it into a monstrosity, destroying the power of the majority to govern, turning over effective control of the Senate to the party that failed to elect a majority of Senators.

That is the real power grab. That is the real power grab. Moreover, despite the dire predictions of opponents of reform, filibuster reform does not mean the end of minority rights in the Senate. Senators of all parties will continue to have ample time to make arguments, attempt to persuade the public or a majority of their colleagues.

The reform proposals that are being considered fully protect the rights of the minority to full and vigorous debate and deliberation, maintaining the hallmark of the Senate.

Presently, Republicans have stated the filibusters were necessary because Democrats employed a procedural maneuver to deprive them of the right to offer amendments, the so-called filling of the tree. Well, notwithstanding the rejoinder that Republican abuse amendments, such as offering amendments totally unrelated to the pending matter—and there again this is where you get into the chicken and egg, who did it first to whom? Nonetheless, I am sympathetic to the argument that the minority ought to have the right to be able to offer amendments. That is why I have included in my resolution guaranteed rights to offer germane amendments—germane amendments, not an amendment dealing with something totally unrelated to the legislation on the floor—to offer legitimate, germane amendments which the minority feels would improve or change, to the minority's liking, whatever legislation, amendment or bill might be on the floor.

Too many people, I believe, confuse minority rights with minority winning. Having the right to debate and to deliberate and to offer amendments does not mean you have the right to get your way. Being allowed to vote on your amendment does not mean you have a right to win the vote. The minority does not deserve the right to prevail in every instance.

The minority obviously can convince some of the majority to join them. Then they become the majority on a given issue or given amendment. That used to happen all the time around here. There is nothing wrong with that. But the minority, I submit, does not deserve the right, under our Constitution, nor under any reasonable interpretation of a Democratic legislative body—they do not have the right to systematically block action by the majority and to veto, to have veto power, over what can even be considered on the floor of the Senate.

The fact is, provided that the minority is vested with ample protections, as it is in my proposal, at the end of ample debate, the majority should be allowed to act. What is so radical? What is so strange about the notion that in a legislative body, the peoples' representatives should vote up or down on legislation or a nominee?

As Senator Henry Cabot Lodge stated many years ago: ''To vote without debating is perilous, but to debate and never vote is imbecile.''

I think at the heart of this debate is a central question that we are not coming to grips with. Do we truly believe in democracy? Do we truly believe the issues of public policy should be decided at the ballot box and not by the manipulation of archaic procedural rules? I think the truth is, both parties appear to be afraid of majority rule, afraid of allowing a majority of Senators to work their will.

At its heart, those who hang on to this outdated rule, those who vigorously oppose the majority having the ability to govern fear the American people. They fear that the people's choices and wishes will be translated into action here in Washington.

The central question for this body is clear: Do we or do we not believe in democracy and majority rule? Elections should have consequences. After ample protections for minority rights, the majority party in the Senate, whether Democratic or Republican, duly elected by the American people, should be allowed to carry out their agenda and be allowed to govern.

Should I be opposed to reform of the filibuster because I am afraid Republicans someday will become the majority party in the Senate and proceed to enact their agenda? No. I believe in democracy for Republicans and Democrats alike. I believe in majority rule for Republicans and Democrats alike.

The distinguished minority leader said recently in regard to this proposal that Democrats ought to be concerned because a couple years from now Republicans might take over this place and would be able to undo a lot of the things we did—fear that somehow the Republicans will get the majority and be able to enact their agenda. I say to my friends, God bless them. If they win the election and become the majority party, they ought to govern. What are

the checks and balances? We don't know whether the President will be a Democrat or a Republican. We don't know what the House is going to be. There are still a lot of internal checks and balances in the committee structure.

The minority, under my proposal, can still slow things down. I read in the paper that one Senator said it ought to be the right of the minority to slow things down. I believe that. I believe that in the Senate the minority ought to have the right to slow things down. That is why my proposal provides for that. There is ample opportunity to slow things down, throw some sand in the gearbox of the majority. But in my proposal, at the end of a period of time of 8 days, the majority can govern. So one can slow it down—slow down everything, every amendment, every bill—so compromise negotiations would still go on.

I hear from my side: What if the tea party gains a majority in the Senate? We will need to filibuster to stop them. I say to my friends on this side and others, it is a sad day in America when the only way we can stop the tea party or any other extreme group is through subterfuge, through filibusters, secret holds, and parliamentary trickery. We have to have a fundamental confidence in democracy and the good sense of the American people. We have to have confidence in our ability to make our case to the American people and to prevail at the ballot box. We must not be afraid of the American people. We must not be afraid of how they cast their votes or for whom. I am not afraid of the will of the people expressed at the ballot box. That is what sent me to this Chamber. I should note, that used to be the operating principle of this body, but over the years, especially recently, it has become grossly distorted.

We all have our views on the recent election and what the American people said. Everybody has a view on that. I will say what my view is. The American people spoke loudly that they are fed up and angry with Washington, with government, and with Congress. They want change, and they want an end to the dysfunction in this city. In too many critical areas—job creation, energy, the economy—people see a Congress that is unable to respond effectively to the urgent challenges of our time.

My proposal is basically the same as I offered 16 years ago. It would amend the Standing Rules of the Senate to permit a decreasing majority of Senators over a period of 8 days to invoke cloture on a given matter. A determined minority could slow things down for 8 days. Senators would have ample time to make arguments and attempt to persuade the public and a majority of their colleagues. This protects the right of the minority to full and vigorous debate and deliberation, again maintaining the hallmark of the Senate. At the end of ample debate, however, there would be an up-or-down vote on an amendment, a bill, a nominee. My proposal would restore a basic and essential principle of representative democracy: majority rule in a legislative body.

I also think there is another advantage—that it would lead to greater compromise. Many have argued that it is the filibuster that forces compromise and collaboration. I disagree. The fact is, right now the minority has no real incentive to compromise. Why should they if they can totally block something and then go out and campaign on a message that the majority just couldn't get anything done? Again, the minority has a great deal of power but zero incentive on compromise.

I believe my proposal would encourage a more robust spirit of compromise. If the minority knows that at the end of the day, at the end of 8 days, 51 votes will be enough to bring a bill to the floor or to end debate on an amendment or a nominee, it seems they would be more willing to come to the table and compromise. And for the majority, the reason to compromise is because for the majority party in the Senate—either one, Democratic or Republican—one of the most valuable things is time, allocation of time. The majority always wants to save time. So rather than chew up 8 days on a nominee or an amendment, the majority would like to get it done in a day or so. The minority, knowing that at the end of 8 days, 51 votes can pass something, will say: Maybe we ought to compromise now and get what we can out of it without dragging it out 8 days. Right now, there is literally zero incentive to compromise.

I also strongly encourage colleagues to support the talking filibuster proposal of Senator MERKLEY. They claim it is about silencing the minority. The fact is, the filibuster has nothing to do with debate and deliberation. It is used to prevent consideration. Rather than serve to ensure the representation of minority views and to foster deliberation, the minority uses the filibuster to prevent debate and deliberation. The filibuster has been used to defeat bills and nominees without their receiving a discussion on the floor. So the world's greatest deliberative body has now become the world's greatest nondeliberative body.

I think a ''yes'' vote today on a vote for reform, for change, and for a government that can effectively address our Nation's challenges is a vote to move ahead. It is a vote for progress—or we can vote for continued gridlock, continued obstruction, and broken government. This body does not function the way it is supposed to.

To be sure, the Founders put in place a system of checks and balances that makes it enormously difficult to enact legislation. It must pass both Houses of Congress. It has to go through committees first. It must pass both Houses of Congress, go to a conference committee, then it goes to the President. He can veto it. And then it can be challenged in court. All are very significant checks.

I often hear opponents of reform claim that what I am proposing would turn the Senate into the House of Representatives because at the end of 8 days, 51 votes could move something. I ask my friends: When did the Senate become defined by Senate rule XXII, which is the filibuster rule? I thought the Senate was defined in the Constitution. Rule XXII, the filibuster rule, is not the essence of the Senate. Regardless, the Senate will continue to be totally different from the House. We have two Senators from small States, two Senators from large States. We are elected every 6 years. We have sole jurisdiction over treaties, impeachments. And the Senate operates, as we know, in so many instances based on unanimous consent. That will continue. So the power of one single Senator remains to object to any unanimous consent request. Eliminating the filibuster will not change the basic nature of this body, nor the constitutional structure of the Senate.

For most of the Senate's history, there were very few filibusters—at most one or two a year. Can someone suggest that the Senate of Henry Clay or Daniel Webster, Lyndon Johnson, Everett Dirksen, that that Senate was the same as the House of Representatives? Even in my short time here—26 years—we used to have amendments on the floor that we would debate and vote, and if you got 51 votes, you won. We don't do that anymore. Under the present structure of the Senate, under the present rule XXII, the way it is being used today, every measure that passes the Senate must have 60 votes. Whatever happened to the idea of majority rule? Now one has to have 60 votes.

I have heard some say that if we have to have 60 votes, this encourages compromise to get to the 60 votes. I am all for compromise. I have brought a lot of legislation to the floor in my time here, and some has been adopted 100 to nothing. Farm bills, appropriations bills, others that I have brought to the floor, both in the majority party and in the minority party as the ranking member on a committee—and we didn't need 60 votes. If someone offered an amendment, they had the right to offer an amendment and get 51 or 52 or 53 votes and win. I have never stood at that desk, either as a committee chair or as ranking member, and insisted that a bill we had on the floor had to have 60 votes in order to pass. But that is what has happened in the Senate now.

Some say that promotes compromise. Anyone who has a bill or an amendment wants to get the most votes possible, right? They want to get more votes. That is the nature of legislation. But sometimes there is a bill or an amendment that does not lend itself to easy compromise. It may be contentious. We may have to take a hard vote. Maybe it only gets 51 votes.

Should that amendment go down to failure because it got 51 or 52 or 53 or 54 or 55 or 58 or 59 votes? Go out and explain that to the American people. Go to the next townhall meeting and say: No matter what happens, you can't pass anything with 51 votes. You have to have 60 votes to pass anything in the Senate. That gives the minority the right to veto anything. See how people react to that. When they understand it, they say: That is nuts.

We all stand for election every 6 years. If we only get 52 percent of the vote, maybe we shouldn't be here because obviously there was no consensus among the people who voted for us that we should represent them if we didn't get 60 percent of the vote. Is that what is coming, that we have to have 60 percent of the vote to even serve in the Senate? I know I am taking it to its extreme. I know no one is suggesting that. But boiled down to its essence, what we are saying is, without adopting reform of the filibuster, yes, we as a U.S. Senate believe a minority has the right to veto anything in this Senate.

I would much rather be on the side that says the minority has a right to slow things down, the minority has the right to debate, the minority has the right to amend, and the minority has a right to win those amendments with 51 votes. But a minority should not have the right to veto and stop legislation.

That is what my proposal does: adequate time for debate, adequate time for amendments, ensuring that the minority can offer an amendment, but, in the end, the majority would rule. It was never intended—never, never intended—that a supermajority of 60 votes would be needed to enact any piece of legislation, any amendment, or confirm a nominee.

Indeed, the Framers of our Constitution were very clear about where a supermajority was required. There were only five to the original Constitution: ratification of a treaty, overriding a veto, votes of impeachment, passage of a constitutional amendment, and expulsion of a Member.

It may come as a shock to many people, but the filibuster is not in the Constitution of the United States. In fact, historically, the first Senate, when it met, included a rule that permitted the majority to end debate and bring a measure to a vote with a majority. It was called ''invoking the previous question.'' But they had the right to do that. It was done away with by Aaron Burr, then-Vice President of the United States. We know what happened to him. But that was done away with.

So the Senate embarked upon a little over 100 years of having no rules. But, then again, the Senate did not do much. They really did not do much. However, in the 21st century, as a major superpower, with things happening with lightning speed around the world, we have to be able to react a little bit more rapidly than how we reacted in the 19th century.

Moreover, reform of filibuster rules stands squarely within a 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 numerous circumstances, such as war powers and the budget. Think about that. For some reason, the Senate, at some point in time, said you cannot filibuster the budget. Imagine that. You can filibuster other things, but you cannot filibuster the budget. How about war powers? What could be more important than whether or not we go to war? It is a power granted to the Congress by the Constitution, but you cannot filibuster it. Think about that.

So we have rules that forbid the filibuster. We have passed four significant reforms of the filibuster since 1917. Today, unfortunately, it has become abundantly clear that we cannot govern a 21st-century superpower when a minority of 41 Senators can dictate action or inaction to a majority of the Senate and a majority of the American people—a majority of the American people.

We had a bill here last year; it was called the DISCLOSE Act. The House passed it twice overwhelmingly. They sent it to the Senate. Now, what did the DISCLOSE Act say? All it did is say the Supreme Court decision in Citizens United, that allowed corporate money to be funneled into campaigns to defeat or support an opponent and did not have to be accounted for, did not have to be made public. Many people suspected there was foreign money coming in through various sources to influence campaigns in the United States because they did not have to report it. So the bill came through that did not overturn the Supreme Court decision. It just said: If you are going to do this, you have to disclose where you got the money.

It passed the House. Polls showed it was supported by well over 80 percent of the people, a majority of Republicans and Democrats around the country. It came to the Senate twice. It got 59 votes. Why isn't it law today? Because you need 60 votes—60 votes. Go back and explain that at your town meetings. Go back and tell them: We don't have that today. We don't have that sunshine law because we need 60 votes, even though we got 59.

This is not the kind of representative democracy the Founders envisioned. It is not the kind of representative democracy that our sons and daughters have fought and died for for over 200 years. How many of our young men and women in uniform today—risking their lives in Afghanistan, Iraq, around the globe—how many of them know they are risking their lives for minority rule—for minority rule, not majority rule—minority rule? Very few, I submit. Very few.

It is time to end the paralysis, the drift, and the decline in the Senate. Yes, let's commit ourselves to debate and deliberation. There is nothing wrong with that, nothing wrong with extended debate. There is nothing wrong with having compromises. There comes a time when maybe a compromise is not in the cards. But should that mean we cannot vote on it, I say to my friends? Should that mean if we cannot get 60 votes, we do not even deserve to have 51 or 52 or 53 votes? Is that what we are saying?

I have heard my friends on the other side—I think I heard; I do not know exactly who it was today—say: Well, the 60 votes promotes compromise. I am all for that. But what if we cannot get the compromise, I say? Then are we saying we cannot have a vote because we cannot get 60 votes? That is, in essence, what they are saying. It is not the bedrock of democratic principle to deny the majority to rule, to finally have a vote.

So there may be a lot of misinterpretations of the amendment I am offering: Oh, it is going to make us like the House. Nonsense. It is going to take away minority rights. Nonsense. It is going to take away the right of the minority to slow things down. Nonsense.

What my amendment does is it says, finally, at some point in time, we are going to exercise our constitutional obligation.

I will close on this: Every 6 years we have an election and we go down here and hold up our right hand and we swear an oath. We swear an oath to uphold and defend the Constitution of the United States against all enemies, foreign and domestic, and to bear true faith and allegiance to the same.

I submit we are not living up to our oath of office in terms of bearing true faith and allegiance to the Constitution when, on the other hand, we enact rules that deny the majority the right to govern—when we deny the majority the right to govern.

So I say every Senator has a lot of power here. The power of a Senator comes not from what we can do but from what we can stop. I have often said that is kind of the dirty little secret of the Senate.

Well, I think it is time for each of us to give up a little bit of our power, to give up a little bit of our power for the good of the country, to give up a little bit of our power of being able to stop something in order that the majority—whomever that majority may be—can carry out their agenda on behalf of the American people.

I do not fear—I do not fear—the voters. I do not fear the ballot box. What I fear is this Senate will continue to be dysfunctional, it will not be able to act, we will continue to drift, we will not be able to respond to the exigencies of our time, the American people will get more and more frustrated and disappointed in the workings of our government, and the end result will be a decline in America.

Look, I am not Pollyannaish. I know none of these proposals will succeed. It

takes 67 votes, they say, to change the rules of the Senate. I believe that is inherently unconstitutional. Can one Congress bind another? Can one Congress bind all future Congresses? Can one Senate bind all future Senates? Can one Senate in a moment of time say we need 90 votes to pass anything here because 90 Members happen to be of one party, so they enact a rule and they say we have to have 90 votes to change any rule, knowing it will probably never happen again?

As Senator Byrd said one time—I know he is being quoted a lot around here today and when it comes to these debates—we should not be bound by the dead hand of the past—the dead hand of the past.

I believe it is the inherent right of the Senate to change its rules by a majority vote at the beginning of any Congress. That is what it says in the Constitution. Each House shall make its rules. It does not say each House makes its rules and every succeeding House must abide by those rules. It does not say that.

So I think we are left with a situation where the Senate—where the Senate—cannot live up to its constitutional obligation. I think it is almost inherently impossible for the Senate to do so. Therefore, I think we must now have to look to the courts to provide some relief in this matter, just as the Supreme Court decided in Baker v. Carr that legislatures could not reapportion themselves. So, therefore, they found it unconstitutional.

I, quite frankly, think a case can be made to the courts that the Senate rules, as they are now applied with the 67-vote threshold, prevent me, a Senator from Iowa, prevent a Senator from Georgia, prevent a Senator from Oregon from fulfilling his or her constitutional obligations to their constituents, to the people who elected them, to try to get legislation passed on a majority basis.

So, like I said, I am not Pollyannaish. I know where the votes are today. I do not know—I know my proposal will not get many votes. It did not get many in 1995 either. And people say: Well, HARKIN, why are you doing this? Why do you do it when you know you do not get many votes? I do it because I believe in it. I believe with all my heart and all my soul that the Senate is not operating constitutionally right now. So I feel this fight must continue.

As I said, I now come to that point in time where I believe that perhaps we must look to the courts for their decision on whether the Senate is capable of fulfilling its constitutional responsibilities and obligations.

So I hope we do not have to go there. I hope we could adopt some of these reforms, such as the Merkley amendment or my proposal. Quite frankly, at the essence of it is the proposal by the Senator from New Mexico. That is the heart of it. Can a majority of the Senate change its rules at the beginning of a Senate? I believe it is constitutionally not only permissible, but I think we are obligated by the Constitution every 2 years to adopt the rules of the Senate by a majority vote and not by 67 votes.

So I close my part of the debate by appealing to the conscience of our Senators to think about majority rule, think about the rights of the minority but think about the rights of the American people to have their voices heard here by a majority vote and not by a supermajority. I believe that is our constitutional obligation.

Madam President, I yield the floor.

The PRESIDING OFFICER (Ms. KLOBUCHAR). The Senator from Georgia is recognized.

Mr. ISAKSON. Madam President, I rise briefly to address a few remarks made by the senior Senator from Iowa and to compliment my colleague from Tennessee. But first, regarding all of these talks about our Founding Fathers and our Constitution, if our Founding Fathers had not intended for supermajorities to determine certain acts of this Congress, why would two-thirds of us have to vote to pass a constitutional amendment and three-fourths of the States have to vote to ratify one? I think that showed the intent. If our Founding Fathers had not intended for minority representation to exist, I wouldn't have two Senators like California; everybody would have a proportionate number of Senators. Finally and most importantly, with regard to the notion that we are the only democracy in the world to have a rule where majority rules, the fact is, that may be true. We are also the richest, safest, most prosperous democracy in the world, and that has a lot to do with the way we govern ourselves. So I wanted to make those three points.

I wish to congratulate Senators WYDEN, MCCASKILL, and GRASSLEY on what I think is a very appropriate amendment to make sure we have total transparency in our process of holds in the Senate. I think that is right, and I think that is exactly what the American people would express.

Lastly, I wish to thank the Senator from Tennessee and the Senator from New York. In the last few weeks, they have done a lot of good work—yeoman's work, as a matter of fact—to make sure this Senate doesn't rush to judgment and make a mistake that would not be in the interests of the institution or the American people. The Senate in the end is all about Senators putting their shoulders to the grindstone and making things work, and I think in this case the Senator from Tennessee has done exactly that, and I wish to compliment him on his work.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL of New Mexico. Madam President, I wish to thank all of the Senators who have come down for this debate. These are just a couple of cleanup, housekeeping things I need to do.

First of all, the charge was made that we are trying to make the Senate like the House. Rather than get in a long debate here, I ask unanimous consent to have printed in the RECORD Federalist Paper No. 62 and a letter from a number of scholars who testified before the Rules Committee.

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

THE FEDERALIST PAPERS

FEDERALIST NO. 62

The Senate

Alexander Hamilton or James Madison

To the People of the State of New York:

HAVING examined the constitution of the House of Representatives, and answered such of the objections against it as seemed to merit notice, I enter next on the examination of the Senate.

The heads into which this member of the government may be considered are:

I. The qualification of senators;

II. The appointment of them by the State legislatures;

III. The equality of representation in the Senate;

IV. The number of senators, and the term for which they are to be elected;

V. The powers vested in the Senate.

I. The qualifications proposed for senators, as distinguished from those of representatives, consist in a more advanced age and a longer period of citizenship. A senator must be thirty years of age at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter. The propriety of these distinctions is explained by the nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages; and which, participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education. The term of nine years appears to be a prudent mediocrity between a total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils.

II. It is equally unnecessary to dilate on the appointment of senators by the State legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems.

III. The equality of representation in the Senate is another point, which, being evidently the result of compromise between the opposite pretensions of the large and the small States, does not call for much discussion. If indeed it be right, that among a people thoroughly incorporated into one nation, every district ought to have a PROPORTIONAL share in the government, and that among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an EQUAL share in the common councils, it

does not appear to be without some reason that in a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation. But it is superfluous to try, by the standard of theory, a part of the Constitution which is allowed on all hands to be the result, not of theory, but ''of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable.'' A common government, with powers equal to its objects, is called for by the voice, and still more loudly by the political situation, of America. A government founded on principles more consonant to the wishes of the larger States, is not likely to be obtained from the smaller States. The only option, then, for the former, lies between the proposed government and a government still more objectionable. Under this alternative, the advice of prudence must be to embrace the lesser evil; and, instead of indulging a fruitless anticipation of the possible mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify the sacrifice.

In this spirit it may be remarked, that the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small States; since they are not less solicitous to guard, by every possible expedient, against an improper consolidation of the States into one simple republic.

Another advantage accruing from this ingredient in the constitution of the Senate is, the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States. It must be acknowledged that this complicated check on legislation may in some instances be injurious as well as beneficial; and that the peculiar defense which it involves in favor of the smaller States, would be more rational, if any interests common to them, and distinct from those of the other States, would otherwise be exposed to peculiar danger. But as the larger States will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser States, and as the faculty and excess of law-making seem to be the diseases to which our governments are most liable, it is not impossible that this part of the Constitution may be more convenient in practice than it appears to many in contemplation.

IV. The number of senators, and the duration of their appointment, come next to be considered. In order to form an accurate judgment on both of these points, it will be proper to inquire into the purposes which are to be answered by a senate; and in order to ascertain these, it will be necessary to review the inconveniences which a republic must suffer from the want of such an institution.

First. It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.

Secondly. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. But a position that will not be contradicted, need not be proved. All that need be remarked is, that a body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

Thirdly. Another defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time, and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that no small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have proceeded from the heads rather than the hearts of most of the authors of them. What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments exhibited by each succeeding against each preceding session; so many admonitions to the people, of the value of those aids which may be expected from a well-constituted senate?

A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities; most governments are deficient in the first. I scruple not to assert, that in American governments too little attention has been paid to the last. The federal Constitution avoids this error; and what merits particular notice, it provides for the last in a mode which increases the security for the first.

Fourthly. The mutability in the public councils arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success. The remark is verified in private life, and becomes more just, as well as more important, in national transactions.

To trace the mischievous effects of a mutable government would fill a volume. I will hint a few only, each of which will be perceived to be a source of innumerable others.

In the first place, it forfeits the respect and confidence of other nations, and all the advantages connected with national character. An individual who is-observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once, by all prudent people, as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him, but all will decline to connect their fortunes with his; and not a few will seize the opportunity of making their fortunes out of his. One nation is to another what one individual is to another; with this melancholy distinction perhaps, that the former, with fewer of the benevolent emotions than the latter, are under fewer restraints also from taking undue advantage from the indiscretions of each other. Every nation, consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of their wiser neighbors. But the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs.

The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uniformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the FEW, not for the MANY.

In another point of view, great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy.

But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so

many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.

PUBLIUS.

DECEMBER 2, 2010.

DEAR MEMBERS OF THE SENATE: As you know, the Senate has debated the merits of the filibuster and related procedural rules for over two centuries. Recently, several senators who are advocating changes to Senate Rule XXII have renewed this discussion. We write this letter today to clarify some of the common historical and constitutional misperceptions about the filibuster and Rule XXII that all too often surface during debates about Senate rules.

First, many argue that senators have a constitutional right to extended debate. However, there is no explicit constitutional right to filibuster. In fact, there is ample evidence that the framers preferred majority rather than supermajority voting rules. The framers knew full well the difficulties posed by supermajority rules, given their experiences in the Confederation Congress under the Articles of Confederation (which required a supermajority vote to pass measures on the most important matters). A common result was stalemate; legislators frequently found themselves unable to muster support from a supermajority of the states for essential matters of governing. In the Constitution, the framers specified that supermajority votes would be necessary in seven, extraordinary situations—which they specifically listed (including overriding a presidential veto, expelling a member of the Senate, and ratifying a treaty). These, of course, are all voting requirements for passing measures, rather than rules for bringing debate to a close.

Second, although historical lore says that the filibuster was part of the original design of the Senate, there is no empirical basis for that view. There is no question that the framers intended the Senate to be a deliberative body. But they sought to achieve that goal through structural features of the chamber intended to facilitate deliberation—such as the Senate's smaller size, longer and staggered terms, and older members. There is no historical evidence that the framers anticipated that the Senate would adopt rules allowing for a filibuster. In fact, the first House and the first Senate had nearly identical rulebooks, both of which included a motion to move the previous question. The House converted that rule into a simple majority cloture rule early in its history. The Senate did not.

What happened to the Senate's previous question motion? In 1805, as presiding officer of the Senate, Vice President Aaron Burr recommended a pruning of the Senate's rules. He singled out the previous question motion as unnecessary (keeping in mind that the rule had not yet routinely been used in either chamber as a simple majority cloture motion). When senators met in 1806 to recodify the rules, they deleted the previous question motion from the Senate rulebook. Senators did so not because they sought to create the opportunity to filibuster; they abandoned the motion as a matter of procedural housekeeping. Deletion of the motion took away one of the possible avenues for cutting off debate by majority vote, but did not constitute a deliberate choice to allow obstruction. The first documented filibusters did not occur until the 1830s, and for the next century they were rare (but often effective) occurrences in a chamber in which majorities generally reigned.

Finally, the adoption of Rule XXII in 1917 did not reflect a broad-based Senate preference for a supermajority cloture rule. At that time, a substantial portion of the majority party favored a simple majority rule. But many minority party members preferred a supermajority cloture rule, while others preferred no cloture rule at all. A bargain was struck: Opponents of reform promised not to block the rule change and proponents of reform promised not to push for a simple majority cloture rule. The two-thirds threshold, in other words, was the product of bargaining and compromise with the minority. As has been typical of the Senate's past episodes of procedural change, pragmatic politics largely shaped reform of the Senate's rules.

We hope this historical perspective on the origins of the filibuster and Rule XXII will be helpful to you as matters of reform are raised and debated. Please do not hesitate to contact us if we can provide additional clarification.

Very truly yours,

Sarah Binder, Senior Fellow, Governance Studies, The Brookings Institution; Professor of Political Science, George Washington University.

Gregory Koger, Associate Professor of Political Science, University of Miami.

Thomas E. Mann, W. Averell Harriman Chair & Senior Fellow, Governance Studies, The Brookings Institution.

Norman Ornstein, Resident Scholar, American Enterprise Institute for Public Policy Research.

Eric Schickler, Jeffrey & Ashley McDermott Endowed Chair & Professor of Political Science, University of California, Berkeley.

Barbara Sinclair, Marvin Hoffenberg Professor of American Politics Emerita, University of California, Los Angeles.

Steven S. Smith, Kate M. Gregg Distinguished Professor of Social Sciences & Professor of Political Science, Washington University.

Gregory J. Wawro, Deputy Chair & Associate Professor of Political Science, Columbia University.

Mr. UDALL of New Mexico. Time and time again last year, during the Rules Committee hearings on rules reform, my Republican colleagues said that any attempt to change the filibuster would make the Senate no different than the House. They said reforming the filibuster would be contrary to our Founders' intent to make the Senate a more deliberative body.

This argument makes little sense to me. The filibuster was never part of the original Senate—the Founders made this body distinct from the House in many ways, but the filibuster is not one of them.

A letter from seven prominent political science scholars, six of whom testified in last year's Rules Committee hearings, states the following:

> [T]here is no explicit constitutional right to filibuster. In fact, there is ample evidence that the framers preferred majority rather than supermajority voting rules. The framers knew full well the difficulties posed by supermajority rules, given their experiences in the Confederation Congress under the Articles of Confederation (which required a supermajority vote to pass measures on the most important matters). A common result was stalemate; legislators frequently found themselves unable to muster support from a supermajority of the states for essential matters of governing.

But we do not have to rely on today's scholars to tell us that the Senate's uniqueness is not premised on the filibuster and unlimited debate. Our Founders explained their vision for our Republic in the Federalist Papers, and Federalist No. 62 explained quite clearly the ways the Senate is unique from the House of Representatives.

In Federalist 62, Alexander Hamilton and James Madison wrote the following:

> The qualifications proposed for senators, as distinguished from those of representatives, consist in a more advanced age and a longer period of citizenship. A senator must be thirty years of age at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter.

They go on to explain about how Representatives will be directly elected by the people, but Senators will be appointed by the State legislatures. This of course was changed in 1913 by the 17th amendment, which established direct election of Senators by popular vote.

This, I would argue, is a far more drastic change to the Senate than anything we could do with rules reform, yet even that change did not turn the Senate into the House.

But perhaps the most important distinction between the bodies is whom we represent.

Federalist 62 explains that the equality of representation in the Senate was the:

> result of compromise between the opposite pretensions of the large and the small States. . . . [T]hat among a people thoroughly incorporated into one nation, every district ought to have a proportional share in the government, and that among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an equal share in the common councils . . . [and] the government ought to be founded on a mixture of the principles of proportional and equal representation.

It is this fact that makes the Senate very different than the House. As a Senator from New Mexico, I represent just over 2 million people. Senators FEINSTEIN and BOXER represent over 37 million constituents in California. And Senators BARRASSO and ENZI, representing Wyoming with a population of just over half a million, actually have fewer constituents than members of the House.

Yet we all have the same vote in the Senate. This is what makes this body unique. Our founders did not intend to protect a minority party from being steamrolled by a majority party, but instead to protect small States from being run over by the large States.

Federalist 62 goes on to discuss how the number of Senators, and the duration of their term, is another key distinction between the bodies. Unlike the House, who are always facing reelection less than 2 years away, two-thirds of the Senate is always free from the same worry.

Coupled with the fact that senators were appointed by the State legislatures, the Founders believed that the

Senate would be a check on the House against legislation that was passed too quickly and without sufficient consideration. But they intended the structure of the Senate to make us a more deliberative body, not the rules that govern us.

So whatever changes we might make to our standing rules, whether minor or significant, the Senate will always be distinct from the House of Representatives. The cloture rule was only implemented in 1917—any changes we make to it today cannot destroy the uniquely deliberative nature of this body.

So to speak more generally now, today we come to the floor as a body to debate changes to the rules that guide this institution. All of the proposals we consider today have merit, in my opinion, and all deserve an up-or-down vote by this prestigious body.

Each proposal is important, but as we consider them one-by-one, we must remind ourselves what brought us to this point in the first place.

The reason we are here is simple: This Senate is broken. Because of partisan rancor and our own incapacitating rules, this body is 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 prevents the Senate from getting its work done. It prevents us from doing the job the American people sent us here to do.

In the Congress that just ended, because of rampant and growing obstruction, not a single appropriations bill was passed. There wasn't a budget bill. Only one authorization bill was approved—and that was only at the very last minute. More than 400 bills on a variety of important issues were sent over from the House. Not a single one was acted upon. Key judicial nominations and executive appointments continue to languish.

The American people are fed up with it. They are fed up with us. And I don't blame them. We need to bring the workings of the Senate out of the shadows and restore its accountability.

That begins with addressing our own dysfunction. Specifically, the source of that dysfunction—the Senate rules.

That is what I—along with my colleagues and friends Senator MERKLEY of Oregon and Senator HARKIN of Iowa—have been trying to do these past weeks. We have been trying to restore the uniquely deliberative nature of this body—while also allowing it to function more efficiently.

On Tuesday, Senator HARKIN, Senator MERKLEY and I each were denied unanimous consent to bring up our resolutions for immediate debate in accordance with article 1, section 5 of the Constitution.

Denying us the ability to debate the important constitutional issue of how this body adopts its rules was unprecedented.

Ten times previous to this—from 1917 to as recently as 1975—the Senate debated reforms to the use of the filibuster, as well as the underlying constitutional issue of adopting reforms by a simple majority at the beginning of a Congress.

The results of these debates varied. But the point I make today is this: each and every time a rules change was proposed, this Senate never denied those Senators the right to debate their proposals through the constitutional option.

During many of these debates, the reform proposal was defeated, often by tabling it—but they had the debate.

1975 was the last time we had a major reform to our filibuster rules.

On three occasions that year, the Senate voted by a simple majority to table points of order against Senator Mondale and Senator Pearson's reform proposal—a proposal that would have amended the cloture threshold from ''two-thirds to three-fifths present and voting.''

It was these votes by a simple majority of the Senate that forced the compromise reform that changed the Senate's cloture threshold to the present rule ''three-fifths duly chosen and sworn.''

We are here today debating the substance of several different proposals, all of which share a goal of restoring debate, deliberation, and transparency to this great body. And this afternoon, we will have votes on these proposals.

But, we will have those votes under thresholds that I strongly believe the Constitution does not require. To deny us the right to have that debate about the constitutional question was unprecedented and, I believe, a mistake.

But, however misguided I believe that decision to be, that decision has been made, and it is one we have to live with.

Now we must seize the opportunity that remains, and that opportunity is the chance for the most substantive debate of the Senate rules in 35 years.

I believe this debate is fundamentally important to the health of this institution. Reform is badly needed. We have a responsibility to the American people to come together and fix the Senate.

Whether that is through the constitutional option—as I believe we have the right and the responsibility—or through other means, I welcome the debate.

As I said more than a year ago when I first proposed the constitutional option: It is time for reform. There are many great traditions in this body that should be kept and respected, but stubbornly clinging to ineffective and unproductive procedures should not be one of them.

Mr. President, I want to close by saying this.

Since the beginning of this process, my actions have been guided by the great respect I have for the institution of the U.S. Senate, my reverence for the many great men and women who have served here, and my sincere affection for my colleagues.

That remains true today. I want to thank my colleagues for their consideration of our proposals, for their willingness to listen, and for their friendship.

And I want to make clear to all those who have supported this effort—our work is not complete: our cause endures. History has made clear that substantial rules reform is—more often than not—the work of many Congresses, not just one.

The debate that began in this Congress will serve as a foundation for reform moving forward. And I commit to doing all I can to ensure that the Senate is not a graveyard for good ideas—but instead remains a shining light of Democracy around the world.

So now we come to the concluding point in the debate where I think it is very appropriate to thank staff. My two staff members who have worked the hardest—all my staff have worked very hard on this, but Matt Nelson and Tim Woodbury deserve individual recognition for their tireless work. I know that as a result of this, we put a lot of pressure on the Rules Committee. Jean Boudwich and her whole crew over there have done a great job and the Parliamentarian shop headed by Alan Frumin. We have also had great assistance from them in terms of answering questions and working with them, so I applaud Alan and all of the Parliamentarians.

At several places in the RECORD, a variety of different items were mentioned. To clarify the RECORD, I ask unanimous consent to have printed, No. 1, a New York Times editorial from January 25; No. 2 includes quotes from constitutional scholars and conservative scholars on the constitutional option; and No. 3 is an op-ed from the Washington Post entitled ''Fixing a Broken Set of Rules.''

I also commend to my colleagues a Harvard Law and Policy Review article entitled ''The Constitutional Option: Reforming the Rules of the Senate to Restore Accountability and Reduce Gridlock.''

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

[From the New York Times, Jan. 25, 2011]

MAKE THEM WORK FOR IT

Senate Democrats now have a rare opportunity to reduce the abuse of the filibuster and increase the chances that the people's work actually gets done. Instead, they are close to an agreement on a watered-down package of changes that will have only a modest effect on the chamber's gridlock.

Over the last four years, Republicans have more than doubled the number of filibusters from the previous period, requiring 60-vote supermajorities for virtually every measure to move forward. In most, a single senator has raised an objection, bringing progress to a halt.

A group of Democratic senators—led by Tom Udall of New Mexico and Jeff Merkley of Oregon—came up with a reasonable proposal to reduce this practice while preserving the minority's right to wage a fight. It would require 10 senators to start a filibuster and then speak continuously on the

floor to keep it going. If an issue is important enough to block, then senators should be willing to work for it and explain themselves to the public.

Democrats could have passed this rule change with a simple-majority vote. But Senate aides say several Democrats are afraid the new rules will put them at a disadvantage should their party fall to a minority. That misses a much more important point. The rules need to be changed not to cripple one party or the other but to improve the efficiency of the Senate no matter who is in power. There is no excuse for even routine budgets and spending bills to languish for lack of 60 votes.

The agreement being negotiated by the leadership of both parties would at least make it harder to block presidential nominations with anonymous holds and would reduce the number of positions needing Senate confirmation—welcome changes.

The two parties are also expected to reach a ''handshake agreement'' to cut back on filibusters and allow the minority party a greater chance to offer amendments to bills. But such agreements can easily fall apart in the chamber's charged environment.

Senator Harry Reid, the majority leader, said Tuesday that the matter would be settled shortly. That means there is still a chance for the Senate to adopt real rules, allowing majority votes to prevail in most circumstances and reserving delaying tactics for unusual cases. Without this reform, the Senate will remain dysfunctional.

CONSERVATIVES SUPPORT THE CONSTITUTIONAL OPTION

In 1957, when the Constitutional Option was attempted on the first day of Congress, Vice President Nixon issued the following opinion while presiding in the Senate:

[W]hile the rules of the Senate have been continued from one Congress to another, 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 a previous Congress. Any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional.

In 2005, Senator Orrin Hatch (R–UT) wrote:

''The compelling conclusion is that, before the Senate readopts Rule XXII by acquiescence, a simple majority can invoke cloture and adopt a rules change. This is the basis for Vice President Nixon's advisory opinion in 1957; as he outlined, the Senate's right to determine its procedural rules derives from the Constitution itself and, therefore, 'cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress.' . . . So it is clear that the Senate, at the beginning of a new Congress, can invoke cloture and amend its rules by simple majority.''

In 2003, Senator John Cornyn (R–TX) wrote:

''Just as one Congress cannot enact a law that a subsequent Congress could not amend by majority vote, one Senate cannot enact a rule that a subsequent Senate could not amend by majority vote. Such power, after all, would violate the general common law principle that one parliament cannot bind another.''

Senator Cornyn also held a hearing in 2003 when he was Chairman of the Subcommittee on the Constitution, Civil Rights and Property Rights of the Judiciary Committee (S. HRG. 108–227). Some of the nation's leading conservative constitutional scholars testified or submitted testimony at that hearing, and all of it supports the principle that a previous Senate cannot enact a rule that prevents a majority in a future Senate from acting. Below is a sample of those quotes:

Steven Calabresi, a professor of law at Northwestern University School of Law, former law clerk for Justice Antonin Scalia, and co-founder of the Federalist Society testified that:

''The Senate can always change its rules by majority vote. To the extent that Senate Rule XXII purports to require a two-thirds majority for rules changes, Rule XXII is unconstitutional. It is an ancient principle of Anglo-American constitutional law that one legislature cannot bind a succeeding legislature. This principle goes back to the great William Blackstone, who said in his commentary, 'Acts of Parliament derogatory from the power of subsequent Parliaments bind not.' ''

Douglas Kmiec, then Dean of the Columbus School of Law at Catholic University, testified about the unconstitutional entrenchment of supermajority rules and stated:

''We currently have in play a process where carryover rules, rules that have not been adopted by the present Senate, are requiring a supermajority to, in effect, approve and confirm a judicial nominee. As you know, to close debate, it requires 60 votes; in order to amend the rules, it requires 67. These are carryover provisions that have not been adopted by this body and by virtue of that, they pose the most serious of constitutional questions because, as I quote, Senator, the Supreme Court has long held the following: 'Every legislature possess the same jurisdiction and power as its predecessors. The latter must have the same power of repeal and modification which the former had of enactment, neither more nor less.' ''

Dr. John Eastman, a professor of Constitutional Law at Chapman University School of Law, said at the hearing that ''the use of supermajority requirements to bar the change in the rules inherited from a prior session of Congress would itself be unconstitutional.''

Testimony submitted to the Committee for this hearing also supports this principle. Professor John C. McGinnis of Northwestern University and Professor Michael Rappaport of the University of San Diego School of Law stated in their written testimony that:

''[The Constitution does not permit entrenchment of the filibuster rule against change by a majority of the Senate. Although the filibuster rule itself is a time-honored senatorial practice that is constitutional, all entrenchment of the filibuster rule, or of any other legislative rule or law, that would prevent its repeal by more than a majority of a legislative chamber, is unconstitutional. Therefore, an attempt to prevent a majority of the Senate from changing the filibuster rule, through a filibuster of that proposed change in the Senate rules, would be unconstitutional.''

Finally, renowned constitutional law scholar Ronald Rotunda stated in written testimony: ''The present Senate rules that create the filibuster also purport not to allow the Senate to change the filibuster by a simple majority. However, these rules should not bind the present Senate any more than a statute that says it cannot be repealed until 60% or 67% of the Senate vote to repeal the Statute. . . . I do not see how an earlier Senate can bind a present Senate on this issue.''

[From the Washington Post, Jan. 4, 2011]

A SENATE NEW YEAR'S RESOLUTION: FIXING A BROKEN SET OF RULES

(By Tom Udall)

Many of us have made new year's resolutions, thinking back on the year that has recently ended and pledging to strive for progress and self-improvement to overcome our shortcomings.

Unfortunately, this sort of self-reflection is not a tradition familiar to the U.S. Senate. It is a tradition, however, that I and several of my Senate colleagues hope to institute on Wednesday, when the 112th Congress convenes.

On that day, my colleagues and I will introduce common-sense proposals to fix the source of our dysfunction—our broken Senate rules. Reform will make the Senate a better legislative body by instituting the transparency and accountability the American people deserve.

Over the past few years, open and honest debate has been replaced too often with secret backroom deals and partisan gridlock. Up-or-down votes on important issues have been unreasonably delayed or blocked entirely at the whim of a single senator. In the past two years alone, more than 400 House-passed bills went unnoticed by the Senate. Stalled judicial and executive nominations left more key government posts vacant longer than during any other period in our country's history. We couldn't even properly fund the government.

We need to bring the workings of the Senate out of the shadows and restore accountability within the chamber.

Under the Constitution, the Senate and the House each ''may determine the rules of its proceedings.'' On the first day of the new session, the rules can be changed under a simple, rather than two-thirds, majority. It is past time for senators to reflect on our rules, how they incentivize obstructionism; how they inhibit, rather than promote, debate; and how they prevent bipartisan cooperation. We then have an obligation to the American people to implement logical reforms to confront these challenges—reforms along the lines many of my colleagues have submitted over the past year.

Ultimately, such changes will not reward one political party over another. Instead, reform will pull back the curtain on those who obstruct the Senate's business for no reason other than to score political points. Rules reform is about restoring good-faith legislating for the betterment of the country. We need to take the backroom deals out of the legislative process and rein in rampant obstruction from individuals; this means no more secret holds and endless delays by threat of filibuster.

With reform, we will ensure that all senators have a full and fair opportunity to debate legislation, offer amendments and evaluate nominees. We will respect the Senate's unique history of unfettered debate and ensure that the minority's voice is heard. But we also will prevent the chamber's rules from being manipulated to allow a small minority to silently obstruct the will of the majority.

The last Congress produced amazing achievements of which we can be extremely proud—health-care reform, Wall Street reform and repeal of ''don't ask, don't tell'' are just a few. But the Senate also failed in many of its key responsibilities, by, for example, not passing a single appropriations bill, keeping critical government posts empty and leaving hundreds of House bills to die. It also failed by too often keeping the debate behind closed doors while the chamber sat empty.

I hope that this is the year we make the Senate accountable to the American people again. It's no wonder constituents are fed up with the way business is done in Washington. The first, fundamental step toward changing that culture lies in exercising our constitutional authority to reexamine the stagnant rules that have allowed dysfunction to

thrive. I urge my colleagues to recognize the obstruction that has prevented us from doing our jobs and join me in reforming Senate rules for the good of our country.

Mr. UDALL of New Mexico. Finally, once again, I wish to thank our leaders. LAMAR ALEXANDER and CHUCK SCHUMER, both working on the Rules Committee, have done a remarkable job in terms of negotiating. Leader REID and Leader MCCONNELL have made a decision which was announced earlier today, and that decision was to change some of the rules, to let us vote on some changes to the rules. And also, I think one of the most significant things—and I know Senator ALEXANDER has mentioned this—is to try to change behavior. More than anything, I think that could be very significant. They talked and decided they would like to do this differently. We would like to get back to the Senate functioning where we bring things up, we debate them, we allow robust debate, we allow the amendment process to work forward. I know Senator ALEXANDER addressed this at one point in his Heritage speech, saying the Senate is a shadow of itself. We want to get back to that Senate with the robust debate and amendment process, and I think both sides have tried to pull that together.

So I very much hope this is a new day in the Senate.

Mr. LEVIN. Madam President, I wanted to take a moment to commend and thank several of my colleagues for their work to end the abuses of the Senate rules. Senators SCHUMER, HARKIN, MERKLEY, UDALL of New Mexico, UDALL of Colorado, and many others dedicated time and effort to this cause. Without their effort, the Senate would not be voting on these resolutions today. I want to briefly outline my views on the five measures we will vote on shortly.

While I believe there are superior ways to end the use of the secret hold, I intend to support the Wyden-McCaskill-Grassley resolution.

I oppose the use of the secret hold, which is a notice by an anonymous Senator of his or her intention to object to proceeding to a measure or matter. Under current Senate practice, a Senator can place a hold on a measure or matter by notifying the Senate leadership of his or her intention to object. Such a notice does not prevent Senate leadership from moving to a particular measure or matter. The problem is that the threat of a filibuster of the motion to proceed is allowed. It should not be. But if Senators threaten to filibuster, that should be made public so they should have to openly defend their threat.

Nowhere in the Standing Rules of the Senate is there any mention of a hold. The hold, secret or otherwise, ends when the leader moves to proceed. I believe the most effective way to end secret holds would be to amend the rules to simply say: ''No Senator may object on behalf of another Senator without disclosing the name of that Senator.'' But the Wyden proposal is useful nonetheless.

The resolution by the Senator of Colorado, Mr. UDALL, would establish a non-debatable motion to waive the reading aloud of an amendment if that amendment has been filed at least 72 hours before the motion and is printed in the RECORD. I support the resolution which is designed to end an abuse of the rules where Senators force or threaten to force the reading aloud of amendments, not to advance their position, but only to delay and prevent debate.

The Harkin resolution would permit a decreasing majority of Senators to invoke cloture. I believe the Harkin resolution goes too far in weakening the fundamental minority rights. The Harkin resolution would allow limited germane amendments during postcloture consideration of a measure, but in my opinion the germane standard is too technical and restrictive. The Harkin resolution would deny the minority the right to offer relevant amendments and therefore I will vote against it.

The substitute amendment to S. Res. 10 offered by Senator TOM UDALL, Senator HARKIN, Senator MERKLEY and others makes important improvements to a measure designed to end abuses of the rules that have prevented the Senate from doing its work in recent Congresses. I support most of the provisions in this resolution. I support ending filibusters on motions to proceed; I support limiting postcloture consideration of nominations; and, I support the elimination of secret holds in the manner prescribed in this resolution.

Those meritorious provisions would go a long way towards ending current abuses of the Senate rules. Those improvements to Senate procedure offset my concern with the extended debate provision. I will address this point in more detail when discussing the Senator from Oregon's provision.

In spite of my concerns with the extended debate provision, I believe this resolution would end many of the common abuses of the rules and deserves support.

Senator MERKLEY has put together a thoughtful proposal to address the abuses of the rules in recent Congresses where a few Senators with too little effort have prevented the Senate from doing its work. However, it does not protect the minority adequately. Under the provisions of his resolution, a simple majority could offer a bill, fill the amendment tree, and file cloture on the bill. If there are more than 50 but fewer than 60 votes to invoke cloture—that is, if cloture is not invoked—once the minority is eventually exhausted, the Senate would proceed to a simple majority vote on the bill without the minority having the opportunity to offer amendments. Because the Merkley resolution does not protect the right to offer amendments, under the rules of the Senate the minority could be precluded from offering amendments. I am concerned that the Merkley resolution, which is designed to end abuses of the minority, could thereby become a tool of abuse by the majority.

Under the current practices and procedures of the Senate, I believe there is too much protection for the minority. However, before the rules are changed for ending debate, sufficient protections in the rules must be provided to the minority to offer relevant amendments. I do not believe this resolution provides those protections and I, therefore, will vote against it.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I have already congratulated Senator UDALL, Senator WYDEN, Senator MERKLEY, and Senator HARKIN for stimulating a good, full discussion about two objectives. No. 1 is, how do we make the Senate the best possible place to deal with serious issues that come before our country, because we have plenty of them right now, starting with our national debt and the high unemployment rates. They have done a good job on that. They have led us today to adopt what I believe are two important steps, one having to do with secret holds and another having to do with taking time away, that might otherwise be better used, by having the clerk read an amendment.

This debate has also produced a couple of other things. One is to create broader support than we have had over a number of years on dealing with the persistent problem of the difficulty a President has in staffing the government. Senator REID and Senator MCCONNELL, when they were whips, tried to deal with this issue. We had three bipartisan breakfasts on this, working with the White House, 2 years ago. Senator LIEBERMAN and Senator COLLINS, who are the committee chairs, have tried to deal with this issue. And we have all failed so far.

But Senator SCHUMER and I will be introducing a bill which we will be discussing with committee chairmen and ranking members especially, and it will have the support of the leaders, Senators MCCONNELL and REID. It will have the active involvement of Senator LIEBERMAN and Senator COLLINS. What we hope to do is two things. One is to reduce the number on Senate confirmed positions—Senator HARKIN spoke about this a little earlier. He has been a ranking member and a chairman. He basically said that we don't need to spend our time here having Senate confirmation of hundreds of part-time boards and commission members or the public relations official for some department. We should focus our attention on issues that affect the American people such as jobs, debt and terror.

The second thing we should do is to end this practice of making it so that the citizens who are invited by the

President of the United States to serve in our government are innocent until nominated. We drag them through a maze of conflicting forms, many of them created by the executive branch and many of them created by the Senate. These nominees fill out forms that trap them and trick them and embarrass them. It is surprising that anybody will accept the opportunity to serve. I remember majority leader Howard Baker was nominated by President Bush to go to Japan as Ambassador. Everybody in the Senate knew him very well. He was voted ''Most Admired Senator'' by Senators on both sides of the aisle in the 1980s. It cost him $250,000 to fill out the forms so that he could be the Ambassador to Japan. I could give many examples of similar difficulties.

Washington, DC, has become the only place where you hire a lawyer, an accountant, and an ethics officer before you find your house and put your kid in school if you come to work here. We need good people in the government. We need to be able to attract them here. We should fix the current system. I greatly appreciate the work Senators SCHUMER, REID, MCCONNELL, LIEBERMAN, COLLINS and others have done. I hope our colleagues will join us in bringing this forward in an expedited way.

I ask unanimous consent to include at the end of my remarks, remarks I made on March 9, 2009, on the Senate floor entitled ''Innocent Until Nominated.''

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

(See exhibit 1.)

Mr. ALEXANDER. Madam President, only two other things.

I wish to congratulate Senator MCCONNELL and Senator REID for leading us in this way. Changing rules is an important step forward. I do not in any way want to diminish what I believe we are about to do, but we need a change in behavior more than we need a change in rules. This debate has caused us to talk across party lines about what we want, and I think what we want is what Senator UDALL said as a whole. We would like most bills to come through committee and then come to the floor. We want to have a chance for most Senators to be able to offer most of their amendments and then to get votes. That is what we should try to do most of the time. Sometimes the Republicans will want to repeal the health care law, and the Democrats will use all of their resources to defeat our efforts. Sometimes the Democrats in the House will send over a bill to repeal the secret ballot in union elections, and Republicans will try to defeat that. We will use all of our resources in those instances. But that won't be most of the time. Most of the time, we will be able to do our jobs better to represent the people who sent us here.

I hope those who have provoked this discussion feel a sense of satisfaction about what they have done, even though I know that in every case they didn't get exactly what they want.

Finally, I ask unanimous consent that a long response to Senator HARKIN's excellent comments on his amendment which he has been fighting for for 16 years, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. ALEXANDER. Senator HARKIN is very straightforward about his difference of opinion. He believes we ought to bring every debate eventually to 51 votes. So I would respectfully term his amendment as sort of a ''hang me now or hang me later.'' We know that eventually it is not 60 votes we are going to require, it is 51, and he says that is the way it ought to be. I disagree. So do many others.

I will just cite two distinguished Senators who spoke on the floor of the Senate about 5 years ago when a number of Republicans got it in their minds that they would like to change the filibuster rule as it affects judges. This is what Senator HARRY REID said then:

> The filibuster is far from a procedural gimmick. It is 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 a 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 are wiser than our Founding Fathers. I doubt that's true.

The then-Senator from Illinois, Barack Obama, referring then to the Republican majority:

> 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.

I would suggest that, as a result of this discussion, we preserve the Senate as an institution, a forum for deliberation where minority rights are protected.

But we have also taken some important steps forward—or are about to—with rules changes to make them function better. We have reached a consensus among ourselves—informally, anyway—that is represented by the colloquy that will be placed in the RECORD by Senator REID and Senator MCCONNELL. They said what we want is an opportunity to represent the American people the way they sent us here to do it, which is to take legislation, bring it through committee, bring it to the floor, and for us to have a chance to amend, debate, and vote. That would be most of the time. Some of the time we will exercise our minority and majority rights to defeat a bill, because that is also what we are sent here to do.

I thank the Senators for this spirited debate. As far as I know, there are no more speakers on the Republican side.

EXHIBIT 1

FLOOR REMARKS OF U.S. SENATOR LAMAR ALEXANDER (R–TN), ''INNOCENT UNTIL NOMINATED''

(March 9, 2009)

Mr. President, in the midst of much talk about bipartisanship and not much to show for it, I have a nomination for an issue upon which we can work together, and that is this: review the maze of conflicting forms, FBI investigations, IRS audits, ethics requirements, and financial disclosures to make it possible for President Obama and future Presidents to put together promptly a team to help them solve big problems.

This is an urgent problem today because during the worst banking crisis since the Great Depression, the man in charge of fixing the crisis, Treasury Secretary Timothy Geithner, apparently is sitting in his office without much help, at least from any Obama Presidential appointees.

According to news accounts, among the key vacant positions at the Treasury Department are the Assistant Secretary for Tax Policy; the Deputy Assistant Secretary for Tax Policy; the Deputy Assistant Secretary for Tax Analysis; the Deputy Assistant Secretary for Tax, Trade, and Tariff Policy; and the Deputy Assistant Secretary for International Tax Affairs. The first choice for Deputy Secretary of the Treasury appears to have withdrawn her name from consideration.

Four months after the President's election, according to TheBigMoney.com, the list of vacancies on the Treasury Department Web site shows that ''Main Treasury Building is a lonely place, conjuring up visions of Geithner signing dollar bills one by one . . ., watering the plants, and answering the phones when he's not crafting a bank rescue plan.''

Of course, there are the career employees available and at least one holdover Assistant Secretary and various czars in the White House—but even one of the czars has expressed concern about the slow pace of filling Treasury Department jobs at a critical time.

Part of the problem may be attributed to the Treasury Secretary's boss, our impressive new President, who is nevertheless subject to the criticism that he is living over the store but not minding it.

Presidents have many problems to solve, but no one ever suggested that the wisest course is to try to solve them all at once. There is a tradition that Washington, DC, can only do one thing well at a time. And Presidents are supposed to exclude from the White House the merely important issues so they may deal with the truly Presidential problems, which surely must not include being distracted by debates with radio talk show hosts.

President Eisenhower, who knew something about leading complex organizations, said in 1952: ''I will go to Korea.'' The country relaxed and elected him, confident that the general would end the Korean war.

We need for President Obama to say in Eisenhower fashion ''I will fix the banks''—and then stay home long enough to do it. Then the country might relax a little and gain some confidence that this might actually happen, which is the first step and perhaps the main step in economic recovery.

But the President needs a team at Treasury to help persuade the American people that he can and will get the job done.

The President has brought on himself some of the difficulty of putting together a team. In addition to having too many balls in the air at once, in my opinion, his standards for hiring sometimes seem to have the effect of disqualifying people who know something about the problem from being hired to solve the problem.

But another part of the President's difficulty in filling jobs—one that has afflicted every President since Watergate—is the maze of investigations and forms that prospective senior officials must complete and the risk they run that they will be trapped and humiliated and disqualified by an unintentional and relatively harmless mistake.

I voted against the nomination of Secretary Geithner because I thought it was a bad example for the man in charge of collecting the taxes not to have paid them. And I thought his excuse for not paying was not plausible. But that does not mean that we should disqualify every Presidential nominee for minor tax discrepancies that result from the complexity of our Byzantine Tax Code, a Tax Code which has reached 3.7 million words, according to a January report by the National Taxpayer Advocate, and which is badly in need of reform.

I suspect very few Americans with complex tax returns can go through a multiple-year audit without finding something with which the IRS might disagree.

Take the case of former Dallas mayor Ron Kirk, President Obama's nominee to be U.S. Trade Representative, who headlines report paid back taxes primarily because he failed to list as income—and then take a charitable deduction on—speaking fees that he gave away to charity. Common sense suggests, and his tax preparer thought, what Mr. Kirk did was appropriate. After all, he did not keep the money. The IRS apparently has a more convoluted rule for dealing with such things. In any event, the matter is so trivial as to be irrelevant to his suitability to be the trade nominee.

Tax audits are only the beginning. There is the FBI full field investigation during which friends of the nominee are asked such questions as: Does he live be and his means?

When I was nominated for Education Secretary a few years ago, one of my friends replied to the FBI agent: Don't we all?

There are Federal financial disclosures. Then there is the White House questionnaire, and, of course, the questions from the confirming Senate committee. The definition of what constitutes ''income'' on some forms is different than the definition of ''income'' on others. It is easy to make a mistake.

This is not as bad as it could be. We have a Democratic President and a Democratic Congress with big majorities in both Chambers. So the nominees have gone through fairly quickly. But when the Congress is of a different party than the President, the congressional questionnaires expand and sometimes delay the nomination for more weeks.

Washington, DC, has become the only place where you hire a lawyer, an accountant, and an ethics officer before you find a house and put your kid in school.

The motto around here has become: ''Innocent until nominated.''

Every legal counsel to every President since Nixon would, I suspect, agree that in the name of effective government, this process needs to be changed. Most have tried to change it, but in Washington style, new regulations pile up on top of old ones, creating a more bewildering maze. So I have this suggestion—and one of the Senators to whom I want to make the suggestion is here today, the Senator from Connecticut. I suggest Senator Lieberman and Senator Collins, who are the chairman and ranking member of the committee with jurisdiction over this mess and who have a tradition of working well together, should set as a goal to clean it up by the end of the year. Invite all the former White House counsels of both parties to give their opinions. Consolidate and simplify the forms so we learn only what we need to know.

To help with this, I suggest that Senators Lieberman and Collins form one of those ''gangs'' that we occasionally form in the Senate, maybe a dozen or more Senators equally divided among both parties—some from the Homeland Security and Governmental Affairs Committee and some not—in order to limit the possibility that everyone will run away from the final recommendations because they fear someone might think Senators are not interested in ethical and good government.

Good government right now means fixing the banks and having the best possible team to do it.

As a Washington Post editorial writer said yesterday of the President:

As he convened his ''health care summit'' at the White House . . . the stock market was hitting another 12-year low, General Motors was again teetering on the brink of insolvency and the country was still waiting to hear the details of the Treasury's proposal to bail out banks. Maybe we can make this grand bargain with our new President: If you will keep your eye on the ball—in this case, fixing the banks so the economy will get moving again—we will work in a bipartisan way to make it easier for you and for future Presidents to promptly assemble a team and govern us properly.

I thank the Chair. I yield the floor.

EXHIBIT 2

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

ADDRESS BY SENATOR LAMAR ALEXANDER, HERITAGE FOUNDATION

(January 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:

[Video—transcript follows]

[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 a 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 New York is recognized.

Mr. SCHUMER. Madam President, I am the last speaker after this very good debate, which was preceded by months and months of serious discussion. I think every one of us is better for going through this process. We understand the Senate better. We have deeper feelings about this hallowed institution, about what it has done, what it can do, and what is wrong with it as well. I think every one of us agrees that the Senate needed to be fixed, and we also agree that we did a lot last year, despite the fact that it was broken. We had different paths to fix it, but fix it we must and fix it we will.

I will say this: Obviously, there are going to be some rules changes and some statutory changes. But a lot of what will make this work is the agreement—informal but serious—between Senators REID and MCCONNELL, which Senator ALEXANDER and I were part of. I say to my colleagues, hopefully, we are opening up a bit of a new era, where bills are allowed to come to the floor, except under extraordinary circumstances, where amendments are allowed to be added to those bills, except under extraordinary circumstances, and there is vigorous debate.

I ask my colleagues to forbear—it is easy for any Senator to stand up and bollix up the whole works. The spirit of the new agreement says think twice, or maybe three times, before you do, because that was the path that led us to the dysfunction.

I, too, want to salute my colleagues, Senators HARKIN, UDALL, and MERKLEY for the great job they did. Senator WYDEN and Senator MCCASKILL and Senator GRASSLEY will have a dream of theirs enacted into the rules momentarily. This has been a fine debate. I don't think the talking filibuster cuts against anything my colleagues on the other side of the aisle have said. I am going to proudly vote for that provision, and maybe—miracle of miracles—it will get two-thirds. But at least there will be a vote, and maybe we can work toward that in the future.

I also do believe that the proposal to not invoke the constitutional option for this Congress and next Congress gives us some time to figure all this out, without closing the door on it forever, because some on our side, I know, were worried about that.

Let us go forward in the spirit of comity that we have seen since the lameduck session. Let us go forward in a bipartisan way that we have worked on these rules changes and move forward in the next few months and try to legislate in the way many of us who have been here longer than a few years used to love, enjoy, and relish. If we can bring those times back, the Senate will be a better place for every one of us, no matter our party or ideology.

I thank all of my colleagues, including my colleague from Tennessee and the two leaders, who stepped to the plate, and the so-called young turks, some of whom have been here much longer than I have been, for importuning us to act.

I yield the floor.

DIRECTION OF THE 112TH CONGRESS

Mr. REID. Madam President, over the past few months, Democrats and Republicans have had many positive discussions about the direction of the 112th Congress. There are many important issues facing our country and solutions will require bipartisan cooperation. In particular, there has been a lot of discussion lately about the Senate rules. Many of my colleagues have spoken to me about the way the Senate operated during the last Congress. I think my friend from Kentucky would agree with me that there was great frustration on both sides of the aisle.

The Senate was always intended to be, has always been, and should always remain, the saucer that allows the boiling tea to cool to ensure rash actions do not get enacted into law; to ensure that laws reflect the cold rationality of reason and not the heat of perhaps misplaced passion. But, there has been concern in recent years that the Senate rules have been abused—that a very few have turned rules designed to ensure careful examination into a simple bottleneck for parochial purposes. Some have even expressed concern that the Senate is broken.

Now, I wouldn't say the Senate is broken, as I am proud to say that the last Congress was historic in its achievements. But the Senate Republican leader, my friend from Kentucky, and I have heard concerns from many different Senators about Senate rules and processes, and we have discussed the issue with each other at length. Senators SCHUMER and ALEXANDER have been an important part of this discussion. Together, we have made important progress on a number of important areas.

Mr. MCCONNELL. I thank the Senator. Senators in both of our parties agree that there has been a significant

breakdown in the Senate, though I am sure there are different perspectives on the causes of the breakdown. We both recall that in the not too distant past, when the minority and majority were reversed, we both had somewhat different perspectives on these issues. But know that the majority leader and I both care about this institution and the vital role it plays in our democracy.

I am happy about the reforms that we will be adopting today. The rules create many rights—for individual Senators, for the minority, and for the majority leader. But, with rights come responsibilities and Senator REID and I have discussed how to ensure that we return to a better balance between those two this Congress, and that the twin hallmarks of the Senate—the right to debate and amend legislation—are restored.

Mr. REID. Yes, we both would like to see a different Senate this year—with fewer filibusters and procedural delays and more opportunities for debate and amendments. In many cases, the problem is not necessarily in the Senate rules, it is in the lack of restraint in the exercise of prerogatives under the rules. Toward that end we will now enter into a colloquy to discuss some of these issues. I have discussed with Senator MCCONNELL that many Senators in the majority have been very unhappy at the excessive use of the filibuster the last two Congresses, particularly on motions to proceed but also at other times when a matter that has bipartisan support is filibustered purely for delay.

Mr. MCCONNELL. And, in my caucus, I have many Senators who have complained that the majority leader has abused his ability to ''fill the amendment'' tree, preventing Senators from offering and debating amendments that they believe are important, especially when a matter has not gone through committee or cloture is filed too quickly.

Mr. REID. As we have discussed, in the interests of comity and more open process in the Senate, we have agreed that we should use these procedural options of filling the amendment tree and filibustering the motion to proceed infrequently. And we will do our best to ensure that other members of our caucuses respect this colloquy, as well.

Mr. MCCONNELL. I agree that both sides should do their best to reinstitute regular order, where bills come to the floor and Senators get amendments. Of course, there will be times when there is no consensus and when either side may want to use all its rights to defeat a bill. But we should endeavor to work together to follow the regular order where practicable and use our procedural options with discretion. And, I will do my best to ensure that other members of my caucus respect this.

I want to close by clearly reaffirming my view that if we are going to change Senate rules, we must do so within those rules. As rule 5 states, the Senate is a continuing body, and the rules continue unless changed within the parameters of the rules.

I strongly reject this notion that a simple majority can muscle their way to new rules at the beginning of a new Congress. I believe this is a flawed approach. Majorities come and go. My Democratic colleagues should be wary of attempting this maneuver because they will not always be in the majority. The Senate is not the House of Representatives, and our Founding Fathers never intended it to be. What some of my colleagues in the majority propose would damage the institution and turn the Senate into a legislative body like the House where a simple majority can run roughshod over the minority. I would oppose such an effort to change the rules with a simple majority in this Congress or the next Congress, regardless of which political party is in the majority. I ask the majority leader to join me in rejecting this effort.

Mr. REID. The minority leader and I have discussed this issue on numerous occasions. I know that there is a strong interest in rules changes among many in my caucus. In fact, I would support many of these changes through regular order. But I agree that the proper way to change Senate rules is through the procedures established in those rules, and I will oppose any effort in this Congress or the next to change the Senate's rules other than through the regular order.

And I hope and expect that we will have a more deliberative and efficient Senate this Congress. In particular, I hope we can reach an agreement to move nominees in regular order. One important reform to the nominations process is reducing the number of Senate confirmed positions. Our offices are working with Senators SCHUMER, ALEXANDER, LIEBERMAN, and COLLINS to draft a bill to accomplish this goal. This bill will be introduced in short order and we will work to get it enacted as quickly as possible.

Many of these positions are part-time boards and commissions or various agency positions that are unrelated to the management of that agency. They could be Presidentially appointed rather than going through the Senate. Although similar efforts have been proposed in the past, I think all of my colleagues realize the need to address this situation as soon as all the details are finalized.

Mr. MCCONNELL. I agree that the Senate spends too much time dealing with a growing number of nominees. It makes sense to reduce the number of positions confirmed and free up committee staff to focus on other nominees or legislation. I appreciate the work of these Senators and look forward to passing this legislation as soon as it is complete.

Mr. REID. I look forward to putting into practice the sentiments in this colloquy. Finally, I hope Senators of good will in both parties will continue discussions as to how we can make the Senate a better institution.

Our discussion today is in a spirit of bipartisan cooperation to express hope and anticipation that the 112th Congress will be different in many ways than the 111th. We look forward to greater comity on both sides of the aisle so that we can move legislation and nominees that have bipartisan support from the majority of Senators in this body. There are areas that we can and should work together to achieve progress for the American people.

Mr. MCCONNELL. I agree with the majority leader that this Congress should be more bipartisan than the last Congress. I do support the idea that the Senate should be able to move forward and complete action on matters with broad bipartisan support. Neither party has all of the solutions to the problems our Nation faces. Many of the successes of past Congresses have been the result of bipartisan cooperation and input. I look forward to such cooperation and input in this Congress.

Mr. REID. Madam President, I ask unanimous consent that all remaining time be yielded back and that there be 2 minutes of debate, equally divided, prior to each vote; further, that all rollcall votes after the first one be for 10 minutes.

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

Mr. REID. Have the yeas and nays been ordered?

The PRESIDING OFFICER. Yes, they have been.

Mr. REID. I yield the floor.

The PRESIDING OFFICER. The pending measure is S. Res. 28. Under the previous order, a vote of 60 is required for adoption of this resolution. There will now be 2 minutes of debate, equally divided.

The Senator from Oregon is recognized.

Mr. WYDEN. Madam President, there has been much discussion about the proposed rules reforms and how far they go. To those who say that this resolution doesn't go far enough, I ask, why have the friends of secrecy fought so hard for so long to allow Senators to anonymously block legislation and nominations?

The fact is this resolution deals with a sweeping, almost unparalleled legislative power—the ability of one Senator to anonymously block a bill or a nomination from going forward. That is not right. Senator GRASSLEY, Senator MCCASKILL, and I have worked with colleagues on both sides of the aisle to say that if you want to exercise that extraordinary power, you ought to do it in the sunlight. There ought to be public disclosure. There ought to be transparency.

I yield the remainder of our time to Senator GRASSLEY, who has championed this cause along with Senator MCCASKILL.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, the time has come to end secrecy on

the floor of the Senate. The time has come for Senators who think they ought to put a hold on a bill to be able to continue to put a hold on a bill or a nomination, but it is also time to show that you have guts enough to let the people know who you are and, more importantly, to let your colleagues know who you are. So if there is something wrong with a piece of legislation or a nomination, we can find out what it is and move the business of the Senate ahead.

This is something that is going to make the Senate a much more efficient place to work and get the people's business done, and it will do what is most important—the public's business in public.

I yield the floor.

The PRESIDING OFFICER. The question is an agreeing to the resolution.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Texas (Mrs. HUTCHISON) and the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays were announced—yeas 92, nays 4, as follows:

[Rollcall Vote No. 2 Leg.]

YEAS—92

Akaka	Franken	Murkowski
Alexander	Gillibrand	Murray
Ayotte	Graham	Nelson (NE)
Barrasso	Grassley	Nelson (FL)
Baucus	Hagan	Portman
Begich	Harkin	Pryor
Bennet	Hatch	Reed
Bingaman	Hoeven	Reid
Blumenthal	Inhofe	Risch
Blunt	Isakson	Roberts
Boozman	Johanns	Rockefeller
Boxer	Johnson (SD)	Rubio
Brown (MA)	Johnson (WI)	Sanders
Brown (OH)	Kerry	Schumer
Burr	Kirk	Sessions
Cantwell	Klobuchar	Shaheen
Cardin	Kohl	Shelby
Carper	Kyl	Snowe
Casey	Landrieu	Stabenow
Chambliss	Lautenberg	Tester
Coats	Leahy	Thune
Coburn	Levin	Toomey
Cochran	Lieberman	Udall (CO)
Collins	Lugar	Udall (NM)
Conrad	Manchin	Vitter
Coons	McCaskill	Warner
Corker	McConnell	Webb
Cornyn	Menendez	Whitehouse
Crapo	Merkley	Wicker
Durbin	Mikulski	Wyden
Enzi	Moran	

NAYS—4

DeMint	Lee
Ensign	Paul

NOT VOTING—4

Feinstein	Inouye
Hutchison	McCain

The PRESIDING OFFICER. On this vote the yeas are 92, the nays are 4. The 60-vote threshold having been achieved, the resolution is agreed to.

Mr. CARDIN. Madam President, I move to reconsider the vote by which the resolution was agreed to and to lay that motion on the table.

The motion to lay on the table was agreed to.

The resolution (S. Res. 28) was agreed to, as follows:

S. RES. 28

Resolved,

SECTION 1. ELIMINATING SECRET SENATE HOLDS.

(a) IN GENERAL.—

(1) COVERED REQUEST.—This standing order shall apply to a notice of intent to object to the following covered requests:

(A) A unanimous consent request to proceed to a bill, resolution, joint resolution, concurrent resolution, conference report, or amendment between the Houses.

(B) A unanimous consent request to pass a bill or joint resolution or adopt a resolution, concurrent resolution, conference report, or the disposition of an amendment between the Houses.

(C) A unanimous consent request for disposition of a nomination.

(2) RECOGNITION OF NOTICE OF INTENT.—The majority and minority leaders of the Senate or their designees shall recognize a notice of intent to object to a covered request of a Senator who is a member of their caucus if the Senator—

(A) submits the notice of intent to object in writing to the appropriate leader and grants in the notice of intent to object permission for the leader or designee to object in the Senator's name; and

(B) not later than 2 session days after submitting the notice of intent to object to the appropriate leader, submits a copy of the notice of intent to object to the Congressional Record and to the Legislative Clerk for inclusion in the applicable calendar section described in subsection (b).

(3) FORM OF NOTICE.—To be recognized by the appropriate leader a Senator shall submit the following notice of intent to object:

''I, Senator _____, intend to object to _____, dated _____. I will submit a copy of this notice to the Legislative Clerk and the Congressional Record within 2 session days and I give my permission to the objecting Senator to object in my name.''. The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date that the notice of intent to object is submitted.

(4) NOTICES ON THE SENATE FLOOR.—The requirement to submit a notice of intent to object to the Legislative Clerk and the Congressional Record shall not apply in the event a Senator objects on the floor of the Senate and states the following:

''I object to _____, on behalf of Senator _____.''

(b) CALENDAR.—

(1) OBJECTION.—Upon receiving the submission under subsection (a)(2)(B), the Legislative Clerk shall add the information from the notice of intent to object to the applicable Calendar section entitled 'Notices of Intent to Object to Proceeding' created by Public Law 110-81. Each section shall include the name of each Senator filing a notice under subsection (a)(2)(B), the measure or matter covered by the calendar to which the notice of intent to object relates, and the date the notice of intent to object was filed.

(2) OBJECTION ON BEHALF.—In the case of an objection made under subsection (a)(4), not later than 2 session days after the objection is made on the floor, the Legislative Clerk shall add the information from such objection to the applicable Calendar section entitled ''Notices of Intent to Object to Proceeding'' created by Public Law 110–81. Each section shall include the name of the Senator on whose behalf the objection was made, the measure or matter objected to, and the date the objection was made on the floor.

(c) REMOVAL.—A Senator may have a notice of intent to object relating to that Senator removed from a calendar to which it was added under subsection (b) by submitting to the Legislative Clerk the following notice:

''I, Senator _____, do not object to _____, dated _____.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date of the submission to the to the Legislative Clerk under this subsection.

(d) OBJECTING ON BEHALF OF A MEMBER.—Except with respect to objections made under subsection (a)(4), if a Senator who has notified his or her leader of an intent to object to a covered request fails to submit a notice of intent to object under subsection (a)(2)(B) within 2 session days following an objection to a covered request by the leader or his or her designee on that Senator's behalf, the Legislative Clerk shall list the Senator who made the objection to the covered request in the applicable ''Notice of Intent to Object to Proceeding'' calendar section.

The PRESIDING OFFICER. The question is on the adoption of S. Res. 29. Under the previous order, 60 votes are required for adoption.

Who yields time? The Senator from Colorado.

Mr. UDALL of Colorado. Madam President, the resolution before us, which I introduced, would encourage Senators to file their amendments 72 hours in advance of a vote to ensure that Members have time to review it, but it would also delay the practice of calling for an outloud reading of the amendment in front of us.

It addresses a concern I think we all have about the amendment process. When a full reading of the amendment has been called for, it ties our Senate into knots. It is a spectacle, with the clerks standing here reading amendments for hours to an empty Chamber. My amendment would prevent needless delays by waiving the live reading of an amendment when the text has been available long enough for all of us to look it over. It would have to be submitted 72 hours in advance.

So I ask for the yeas and nays, and I hope for an overwhelmingly bipartisan approval of this important change to the Senate rules.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Madam President, this amendment puts into effect what the Republicans called in the health care debate the Bunning rule, which is, if it is not on the Internet and not available for 72 hours, it shouldn't be brought up.

We think this is a sensible—I think this is a sensible amendment, and I urge a ''yes'' vote.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the resolution.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Texas (Mrs. HUTCHISON) and the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER (Mr. FRANKEN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 81, nays 15, as follows:

[Rollcall Vote No. 3 Leg.]

YEAS—81

Akaka	Enzi	Merkley
Alexander	Franken	Mikulski
Ayotte	Gillibrand	Moran
Barrasso	Graham	Murkowski
Baucus	Grassley	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bingaman	Hoeven	Portman
Blumenthal	Isakson	Pryor
Blunt	Johanns	Reed
Boozman	Johnson (SD)	Reid
Boxer	Johnson (WI)	Roberts
Brown (MA)	Kerry	Rockefeller
Brown (OH)	Kirk	Sanders
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Kyl	Shelby
Carper	Landrieu	Snowe
Casey	Lautenberg	Stabenow
Chambliss	Leahy	Tester
Coats	Levin	Udall (CO)
Cochran	Lieberman	Udall (NM)
Collins	Lugar	Warner
Conrad	Manchin	Webb
Coons	McCaskill	Whitehouse
Corker	McConnell	Wicker
Durbin	Menendez	Wyden

NAYS—15

Coburn	Hatch	Rubio
Cornyn	Inhofe	Sessions
Crapo	Lee	Thune
DeMint	Paul	Toomey
Ensign	Risch	Vitter

NOT VOTING—4

Feinstein	Inouye
Hutchison	McCain

The PRESIDING OFFICER. On this vote, the yeas are 81, the nays are 15. The 60-vote threshold having been achieved, the resolution is agreed to.

The resolution (S. Res. 29) was agreed to, as follows:

S. RES. 29

Resolved,

SECTION 1. READING OF AMENDMENTS.

(a) STANDING ORDER.—This section shall be a standing order of the Senate.

(b) WAIVER.—The reading of an amendment may be waived by a non-debatable motion if the amendment—

(1) has been submitted at least 72 hours before the motion; and

(2) is available in printed or electronic form in the Congressional Record.

The PRESIDING OFFICER. The question is on the adoption of S. Res. 8. Under the previous order, an affirmative vote of two-thirds of the Senators voting is required for adoption. There is 2 minutes evenly divided.

The Senator from Iowa.

Mr. HARKIN. Mr. President, this is the same resolution I offered 16 years ago. I continue to offer it. If you believe the minority ought to have the right to slow things down, that is fine. But if you believe the minority should have the right to veto anything that comes on the floor, you don't want to vote for my resolution.

What my resolution says is that basically you need 60 votes. Then, if you don't get it, 3 days later you have another vote, it would be 57 votes; 3 days later, 54 votes; after 8 days, 51 votes could move a nominee, an amendment, or a bill. So it gives the minority the right to slow things down, the right to amend, the right to debate, the right to make their voices heard, but in the end it gives the majority the right to move legislation. We are a legislative body. The majority ought to have the right to move legislation. The minority should not have the right to veto.

Right now in the Senate you have to have 60 votes to pass anything. We used to be able to bring up amendments here and get 51 or 52 votes and pass it. That no longer happens.

If you believe in democracy, trust the American people, trust the ballot box. I am not afraid. I am not afraid of the majority enacting its will as long as I have the right to debate an amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time in opposition? The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, this amendment might be called the ''if you are going to hang me later, hang me now'' amendment. This would eliminate the filibuster by making certain that it only took 51 votes, eventually, to pass a bill. This filibuster, according to the current majority leader in 2005, ''is a part of the fabric of this institution we call the Senate.'' Former Senator Obama said in the same year, ''If the majority,'' he then referred to the Republicans, ''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.''

We have agreements today that will begin to end fighting and gridlock, bring bills to the floor, having more amendments.

I urge a ''no'' vote on the proposal.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the resolution.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Texas (Mrs. HUTCHISON) and the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 12, nays 84, as follows:

[Rollcall Vote No. 4 Leg.]

YEAS—12

Begich	Harkin	Lieberman
Blumenthal	Kerry	Mikulski
Durbin	Kohl	Shaheen
Gillibrand	Lautenberg	Udall (NM)

NAYS—84

Akaka	Ensign	Murray
Alexander	Enzi	Nelson (NE)
Ayotte	Franken	Nelson (FL)
Barrasso	Graham	Paul
Baucus	Grassley	Portman
Bennet	Hagan	Pryor
Bingaman	Hatch	Reed
Blunt	Hoeven	Reid
Boozman	Inhofe	Risch
Boxer	Isakson	Roberts
Brown (MA)	Johanns	Rockefeller
Brown (OH)	Johnson (SD)	Rubio
Burr	Johnson (WI)	Sanders
Cantwell	Kirk	Schumer
Cardin	Klobuchar	Sessions
Carper	Kyl	Shelby
Casey	Landrieu	Snowe
Chambliss	Leahy	Stabenow
Coats	Lee	Tester
Coburn	Levin	Thune
Cochran	Lugar	Toomey
Collins	Manchin	Udall (CO)
Conrad	McCaskill	Vitter
Coons	McConnell	Warner
Corker	Menendez	Webb
Cornyn	Merkley	Whitehouse
Crapo	Moran	Wicker
DeMint	Murkowski	Wyden

NOT VOTING—4

Feinstein	Inouye
Hutchison	McCain

The PRESIDING OFFICER. On this vote, the yeas are 12, the nays are 84. Two-thirds of those voting for adoption not having voted in the affirmative, the resolution is rejected.

Mr. KERRY. Mr. President, I am necessarily absent for the votes today on S. Res. 10 and S. Res. 21. If I were able to attend these vote sessions, I would oppose S. Res. 10 and would support S. Res. 21.

The PRESIDING OFFICER. The question is on the adoption of S. Res 10. Under the previous order, an affirmative vote of two-thirds of the Senators voting is required for adoption.

The substitute amendment is agreed to.

There is now 2 minutes of debate, equally divided.

The Senator from New Mexico.

Mr. UDALL of New Mexico. Mr. President, S. Res. 10 does five simple things: limits debate on the motion to proceed to 2 hours; eliminates secret holds; No. 3, guarantees the majority and minority three amendments with a 60-vote threshold; No. 4, institutes a talking filibuster; and, No. 5, shortens postcloture debate on nominations, both executive and judicial, from 30 hours to 2 hours.

I would ask my colleagues to support the resolution. I yield back.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, in his last appearance before the Rules

Committee, Senator Byrd quoted James Madison's description of this body as a necessary fence against rulers and transient impressions and said the right to filibuster anchors this necessary fence and we must never, ever tear down the only wall, the necessary fence, that the Nation has against these excesses.

This amendment does not tear down that fence, but it seriously weakens it. I recommend a ''no'' vote.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL of New Mexico. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the resolution.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), the Senator from Hawaii (Mr. INOUYE) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Texas (Mrs. HUTCHISON) and the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 44, nays 51, as follows:

[Rollcall Vote No. 5 Leg.]

YEAS—44

Akaka	Gillibrand	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bingaman	Johnson (SD)	Rockefeller
Blumenthal	Klobuchar	Sanders
Boxer	Landrieu	Schumer
Brown (OH)	Lautenberg	Shaheen
Cantwell	Leahy	Stabenow
Cardin	Levin	Tester
Carper	Lieberman	Udall (CO)
Casey	Manchin	Udall (NM)
Conrad	McCaskill	Warner
Coons	Menendez	Whitehouse
Durbin	Merkley	Wyden
Franken	Mikulski	

NAYS—51

Alexander	Ensign	Murkowski
Ayotte	Enzi	Paul
Barrasso	Graham	Portman
Baucus	Grassley	Pryor
Blunt	Hatch	Reed
Boozman	Hoeven	Reid
Brown (MA)	Inhofe	Risch
Burr	Isakson	Roberts
Chambliss	Johanns	Rubio
Coats	Johnson (WI)	Sessions
Coburn	Kirk	Shelby
Cochran	Kohl	Snowe
Collins	Kyl	Thune
Corker	Lee	Toomey
Cornyn	Lugar	Vitter
Crapo	McConnell	Webb
DeMint	Moran	Wicker

NOT VOTING—5

Feinstein	Inouye	McCain
Hutchison	Kerry	

The PRESIDING OFFICER. On this vote the yeas are 44, the nays are 51. Two-thirds of those voting for adoption not having voted in the affirmative, the resolution, as amended, is rejected.

The question is on agreeing to S. Res. 21, as amended. Under the previous order, an affirmative vote of two-thirds of the Senators voting is required for adoption of the substitute amendment, as agreed to.

There is now 2 minutes of debate equally divided.

The Senator from Oregon.

Mr. MERKLEY. Mr. President, I thank Senator LAUTENBERG for introducing the concept of a talking filibuster 2 years ago, and I thank all colleagues who have worked to end the abuse of our current filibuster. The fact is, we have not done any appropriations bills in 2010. We left 100 nominations without our advise and consent or opposition, and we left 400 House bills collecting dust on the Senate floor. The American people believe the filibuster is an act of personal courage. Let's make it so. They believe those who filibuster should make their case before the public. Let's make it so. They believe when 41 Senators want additional debate, let's make it so. Let's end the secrecy and obstruction of the silent filibuster and establish the accountability of the talking filibuster.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, in his last appearance before the Rules Committee, Senator Byrd said:

> Forceful confrontation to a threat to filibuster is undoubtedly the antidote to the malady.

He also said:

> I also know that current Senate rules provide the means to break a filibuster.

If Senator Byrd, who knew the rules better than any of us, thought that, we don't need to change the rules.

I urge a ''no'' vote.

The PRESIDING OFFICER. The question is on agreeing to S. Res. 21 as amended.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), the Senator from Hawaii (Mr. INOUYE), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Texas (Mrs. HUTCHISON) and the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER (Mr. BENNET). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 46, nays 49, as follows:

[Rollcall Vote No. 6 Leg.]

YEAS—46

Akaka	Hagan	Nelson (FL)
Begich	Harkin	Reed
Bennet	Johnson (SD)	Rockefeller
Bingaman	Klobuchar	Sanders
Blumenthal	Kohl	Schumer
Boxer	Landrieu	Shaheen
Brown (OH)	Lautenberg	Stabenow
Cantwell	Leahy	Tester
Cardin	Lieberman	Udall (CO)
Carper	Manchin	Udall (NM)
Casey	McCaskill	Warner
Conrad	Menendez	Webb
Coons	Merkley	Whitehouse
Durbin	Mikulski	Wyden
Franken	Murray	
Gillibrand	Nelson (NE)	

NAYS—49

Alexander	Ensign	Murkowski
Ayotte	Enzi	Paul
Barrasso	Graham	Portman
Baucus	Grassley	Pryor
Blunt	Hatch	Reid
Boozman	Hoeven	Risch
Brown (MA)	Inhofe	Roberts
Burr	Isakson	Rubio
Chambliss	Johanns	Sessions
Coats	Johnson (WI)	Shelby
Coburn	Kirk	Snowe
Cochran	Kyl	Thune
Collins	Lee	Toomey
Corker	Levin	Vitter
Cornyn	Lugar	Wicker
Crapo	McConnell	
DeMint	Moran	

NOT VOTING—5

Feinstein	Inouye	McCain
Hutchison	Kerry	

The PRESIDING OFFICER. On this vote, the yeas are 46 and the nays are 49. Two-thirds of those voting for adoption not having voted in the affirmative, the resolution, as amended, is rejected.

Mr. KERRY. Mr. President, earlier today I supported S. Res 8 because I believe additional action to change existing Senate rules to limit filibusters are needed.

I very much appreciate the work of Majority Leader REID and Minority Leader MCCONNELL in developing a colloquy printed in the RECORD today. Specifically, I support the pledges to limit the use of filibusters on motions to proceed and to fill the amendment tree on legislation only when necessary.

Unfortunately, I do not believe that these pledges alone go far enough to address the dysfunction the—epic dysfunction—of the last years.

Frankly, the extraordinary measure of a filibuster has become an ordinary expedient. Today it's possible for 41 Senators representing only about one-tenth of the American population to bring the Senate to a standstill. The filibuster has its rightful place. I used it to stop drilling for oil in the Arctic Wildlife Refuge because I believed that was in our national interest—and 60 or more Senators should be required to speak up on such an irrevocable decision. But we have reached the point where the filibuster is being invoked by the minority not necessarily because of a difference over policy, but as a political tool to undermine the Presidency. Consider this: in the entire 19th century, including the struggle against slavery, fewer than two dozen filibusters were mounted. Between 1933 and

the coming of World War II, it was attempted only twice. During the Eisenhower administration, twice. During John Kennedy's presidency, four times—and then eight during Lyndon Johnson's push for civil rights and voting rights bills. By the time Jimmy Carter and Ronald Reagan occupied the White House, there were about 20 filibusters a year.

But in the 110th Congress of 2007–2008, there were a record 112 cloture votes. And in the 111th Congress, there were 136, one of which even delayed a vote to authorize funding for the Army, Navy, Air Force and Marine Corps during a time of war. That is not how the Founders intended the Senate to work—and that's not how our country can afford the Senate not to work.

Chris Dodd said it best in his farewell address just a few weeks ago—a speech the Republican leader called one of the most important in the history of the Chamber. Chris sounded a warning: ''What will determine whether this institution works or not, what has always determined whether we will fulfill the Framers' highest hopes or justify the cynics' worst fears, is not the Senate rules, the calendar, or the media. It is whether each of the one hundred Senators can work together.''

That was a speech that needed to be heard. But the question now isn't whether it was heard; it is whether we really listened to it. Because when it comes to the economy, our country really does need 100 Senators who face the facts and find a way to work not just on their side, but side by side.

It was with Chris's words in mind that I supported Senator HARKIN'S effort to reform the filibuster rules even though I have concerns about how the provision would affect debate in the Senate by moving to a majority vote. I did so because I believe it is important to protest the actions by the minority over the past four years and make a statement that we must have an end to the unprecedented disruption that has occurred.

Ultimately, Leader REID is right—the question is not the rules, but our decisions about how to abuse those rules. I hope the minority will end this needless obstructionism as we move forward in the 112th Congress.

The PRESIDING OFFICER. The Senator from Delaware.

MORNING BUSINESS

Mr. CARPER. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

The Senator from Delaware.

THE NEXT GENERATION OF AMERICAN MANUFACTURING

Mr. COONS. Mr. President, I rise to speak for the first time in this Chamber as a Senator. It is an honor to do so. Already, after my service at the end of the 111st Congress, I am keenly aware of the impressive array of skills brought to this place by my colleagues and of the great traditions of this Chamber, as well as the tremendous challenges facing both our Nation and this institution as we work together to make progress.

On November 2, the citizens of Delaware elected me to come here on their behalf and work with 99 other Senators for a very specific goal: getting America moving again and getting our economy back on track. With our country just now recovering from the loss of so many jobs, with a substantial deficit and the painful and lingering wreckage of a great recession, we must set aside politics and focus on progress.

I am honored to have this opportunity to serve. I am especially honored to serve alongside our State's distinguished senior Senator, TOM CARPER, and to serve at a time when the President of the Senate is another distinguished Delawarean, Vice President JOE BIDEN, whose service in this body for 36 years was marked by a tireless advocacy for America's middle class and the people of our State. Membership in the Senate is a privilege not to be taken lightly, and I am determined to make the greatest contribution I can to solving the challenges facing us all.

Similar to my colleagues, my path to the Senate involved many experiences that have shaped my views and priorities. Growing up in Delaware, my family taught me the values of faith, hard work, and service to others. As a student, traveling and volunteering in Africa and later working with the homeless in this country, I learned difficult truths about poverty and human suffering but also witnessed the awesome power of hope and faith. Later, working for the National ''I Have a Dream'' Foundation and running an AmeriCorps program, I saw the transformative power of education and of national service to change lives.

Following these early years of learning and service, I spent 8 years as in-house counsel to one of Delaware's most innovative, high-tech manufacturing companies, where I saw the strength of American ingenuity and entrepreneurship. Later, as county executive, running a local government that served half a million Delawareans, I learned how to make the tough choices that led to reining in spending, to growing our local economy, balancing a budget, and achieving a surplus. Most important, today, as a husband and father of three young children, I spend more time than ever concerned about their future, wondering whether we will leave them and all our children a nation burdened by debt and struggling to maintain its place in the world or a nation with a renewed strength and focus on the fundamentals that made this the greatest Nation in human history. As a Member of the Senate, I look forward to applying these lessons while working with my new colleagues.

I said a few moments ago our constituents sent us here with the goal of getting our economy back on track, a goal of focusing relentlessly on economic recovery. However, mere recovery—recovery alone—cannot be our goal. The American people deserve and expect from us policies that will lead to an economy and a job market stronger, more vibrant, and more prosperous than before. To achieve this, I believe we need to pursue a new manufacturing agenda, one that will lead to the creation of inventive businesses and that will open new plants and hire skilled workers for modern and sustainable jobs, one that will produce the next generation of American manufacturers. It should focus on sustaining and growing American manufacturing by rewarding innovation and fostering entrepreneurship and by pairing those great American strengths to an equally great American workforce.

As someone long committed to progressive values, I believe the best way to help stabilize neighborhoods and support families, to advance social justice and fight poverty, is through ensuring more and more Americans have access to good, high-quality jobs. I am encouraged President Obama chose to highlight competitiveness and innovation in his State of the Union Address and its potential to create those sustainable middle-class jobs. He is right to call this our generation's ''Sputnik moment.''

We have a choice. We can keep doing the things we have for years, but then we will simply keep getting the same results or we can recommit ourselves, as we did as a nation during the space race, to outinnovate, outcompete, and outproduce every other Nation. That is how we, once again, can spark an era of growth and prosperity. Unlike so many other sectors of our economy, with manufacturing, it is not just about creating jobs, it is about creating and sustaining good jobs, jobs that pay a livable wage, provide quality health insurance, jobs with longevity and security.

According to the National Association of Manufacturers, the average manufacturing worker in our country earned 25 percent more than workers in all other sectors. That is over $72,000 last year, including pay and benefits, while the average nonmanufacturing worker earned less than $59,000. Manufacturing jobs means higher wages and better benefits, and they have for decades been a reliable path for the middle class for millions of hard-working American families. That path is not nearly as wide or as clear as it was just 10 years ago. Since then, our Nation has lost more than 3 million manufacturing jobs not only to the developing world but to our competitors in the industrialized world as well.

For those who have lost jobs, the stakes couldn't be higher, and for we as leaders our mandate couldn't be clearer.