

Street media, it is likely they will ignore the actual facts. Even though the President will never again run for any public office, he will have put cheap political points ahead of a reasonable deal he claims to support.

This is deeply cynical, and the President should understand that when the history of this episode is written, he will be portrayed not as a strong leader but one who wilted in the face of our generation's greatest challenge, caving in to the special interests over the well-being of the country. When he faced the choice of tough statesmanship or easy accolades from his household cable news network and a dead-ender base, he chose the latter.

I think it is time for the President to start leading and to put away his campaign talking points and talk to us rather than talking from a toy factory and trying to make his points. He needs to put away his campaign talking points, and he needs to engage in finding a balanced solution to our debt crisis. He needs to lead the country, and he needs to protect American small business, their workers, and their children from an increasingly dim fiscal future.

I am concerned about it. As I study it, the difference between the President's plan and what Senator MCCONNELL and I have suggested, putting it over for 1 year and giving us 1 year to dedicate that to tax reform, the difference is about \$23 billion. At the most, it is \$68 billion. We are going to go to the cliff, \$23 billion? We would have to be nuts, even if our illustrious media will cover it up.

I yield the floor.

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

#### RULES OF THE SENATE

Mr. GRASSLEY. Madam President, there has been a lot of discussion lately about how the Senate is not working properly. This is evident to even a casual observer. On the other hand, to understand how the Senate was intended to work and what has gone wrong requires some knowledge of the history and the rules of the Senate. I would put more emphasis upon the history than the present rules of the Senate, particularly the history and purpose of the Senate expressed in the Federalist Papers by the people who were advising the States at that point, the colonies, to approve the Constitution.

To many people, this subject, no doubt, seems arcane and confusing. The simplistic explanation we get from the other side of the aisle—and it is a steady drumbeat—is that Republicans are filibustering everything just willy-nilly; thereby, grinding the Senate to a halt.

Various vague and nefarious motivations are suggested as to why Republicans would do such a thing, but the point they want Americans to take away is that Republicans are abusing

the filibuster. This message has been repeated ad nauseam by Democrats in the hope it will sink into the public's consciousness by rote. In fact, the story goes that Republicans have so abused the filibuster, the Democrats have no choice but to take it away, even if it means violating the Senate rules in order to change the rules. Can you imagine a political party saying it is OK to ignore the rules or to change the rules?

In order to discuss this topic, it is very important to establish what we mean by the word "filibuster" and how it fits into how the Senate operates today and has operated historically. I hope everyone will bear with me as we try to understand this because I ultimately want to get down to how the proposed changes to the Senate rules threaten the very principle underlying our system of government, particularly the checks and balances within our system of government.

First, I have a legitimate question: What is a filibuster? We talk about it so much that we would think it referred to a very specific activity that is easily understood by everyone. It can actually refer to different types of activities. Of course, this leads to confusion, and that confusion is reflected in some of the speeches from colleagues on the other side of the aisle, intentionally or not.

When most Americans think of a filibuster, they probably think of Jimmy Stewart in the classic film "Mr. SMITH Goes to Washington," standing and talking without stopping for an extended period of time to delay proceedings and to take a lot of theater just to make a point. This is the classic understanding of a filibuster. Unless all Senators have agreed to waive Senate rules, it is a fact that a Senator who has been recognized to speak may retain the floor as long as he continues to speak. This is the basis in the Senate rules for a classic filibuster, but this is not the rule some Democrats want to change.

When the Members of the majority party complain about how many filibusters the Republicans have engaged in, they actually mean how many times the Senate has voted on a motion to bring debate to a close, and that motion is called the cloture motion. When debate comes to an end, it also means no more opportunities for amendments. If Republicans don't agree to end debate and force a final vote when the majority leader decides we should end debate and vote, he calls that a filibuster. In fact, even when every single Republican votes in favor of ending debate, he still calls it a filibuster. It ends up in those statistics that add up to numbers that are not very intellectually honest. Think of Republicans voting in favor of ending debate and it is still called a filibuster.

We just voted a day or two ago, 93 to 0, to end debate on the Defense authorization bill. Is he still going to call that a filibuster as well? How can he

accuse Republicans of filibustering when he is the one who made the cloture motion? This is a key point. When the Democrats talk about Republicans launching a filibuster, it is important to note it is the Senate majority leader who almost exclusively makes the motion to invoke cloture. I understand it takes a petition of 16, but not very many Senators I know ever initiate such a petition unless the Republican leader, when we are in the majority, or the Democratic leader, when they are in the majority, provoked that. This means the number the majority leader is so fond of quoting as a number of so-called Republican filibusters is the number of times he has attempted to shut down debate and block further amendments from being considered. Again, we are talking about a process launched by the majority leader intended to shut off debate and amendments, not some process initiated by Republicans.

If every time the majority leader made the motion to close debate we had been considering a bill for days or weeks with dozens of amendments and no end in sight, then there is a legitimacy to such a decision by the majority leader in the petition for cloture. He might then have a point. However, the recent history of the Senate cloture votes tells an entirely different story.

The majority leader has filed a motion to cut off debate in the same day a bill has been taken up over 220 times since he became majority leader. How can this be justified, considering the history of the Senate and given that it is a deliberative body? He certainly cannot claim Republicans are delaying action with excessive debate when he moves to cut off debate before that debate has ever begun. As I said, by forcing a final vote, a cloture motion also ultimately cuts off the amendments.

The right of a Senator to offer an amendment for consideration has been enshrined in the Senate rules from the very beginning. It is true that about half the cloture votes I cited were on the motion to proceed to consider a bill which is before the stage where amendments can be offered. I will say more on that point later. However, the majority leader has moved to cut off debate on amendments on a measure other than the motion to proceed over 100 times. In my judgment, he can hardly claim Republicans forced his hand by offering too many amendments when few, if any, amendments have even been considered when he attempts to cut off amendments.

What is more, the majority leader has consistently used the tactic called filling the tree, where he offers blocker amendments that block any other Senator from offering their own amendments unless the majority leader or somebody speaking for him agrees to set aside a blocker amendment so the other Senator can offer an amendment. This way he is able to get in line first to put his blocker amendments in place

because of a tradition that the majority leader has priority to be recognized by the Presiding Officer. This doesn't happen to appear anyplace in the rules. In fact, the rules make very clear that whatever Senator seeks recognition first should be recognized and that any Senator has a right to offer an amendment. This so-called filling the tree tactic was relatively rare before Senator REID became majority leader, but he has made it routine.

Technically, some germane amendments can be considered during a short window after cloture has been invoked and before final vote. But by using the blocker amendment tactic, along with a motion to invoke cloture, the majority leader can block any Senator from offering any amendment while shutting off debate. That means the Senate would take a final vote on a bill without a single amendment having been offered.

The abuse of this tactic is at the heart of the Senate's current gridlock. This is confirmed by a chart—and I don't have a copy of this chart with me—published with a recent New York Times article. Here is what the caption said:

The use of filibusters has risen since the 1970s, especially when Republicans have been in the Senate minority.

That would tend to blame Republicans, but listen to the rest of this quote.

But the most recent spike of Republican filibusters has coincided with the Democrats' unprecedented moves to limit amendments on the Senate floor.

This doesn't even tell the whole story because much of the time the Senate majority leader doesn't have to actually use his amendment-blocking tactics. He simply informs Republicans he will block amendments or refuses to commit to allow Republican amendments before making the motion to consider a bill. In this all-too-common scenario, the majority leader tells the Republicans he intends to move to consider a bill and will immediately move to cut off debate on that motion. By the way, if we do vote to take up this bill, we will not be allowed to offer any amendments. So that kind of puts everybody on this side of the aisle in a take-it-or-leave-it situation. Why on Earth would Republicans take that deal and vote for cloture on proceeding to a bill on which we are told we will be allowed no input, contrary to the deliberative tradition of the Senate?

Just to be clear, some Democrats have proposed eliminating the filibuster entirely. Others have proposals to limit it in various ways. Majority Leader REID wants to start by eliminating it on the motion to proceed. But as we have seen, the real problem is the way Republicans have been blocked from participating in the process. If we are looking to reform how the Senate operates, maybe we ought to start by considering doing away with the tradition that the majority leader can block amendments. That is something which

is already contrary to the letter of the Senate rules.

Again, there is no doubt that the Senate is not functioning properly. However, the complaints I hear from Iowans are not that the Senate is considering too many amendments and working too hard to make sure the legislation we pass is worded properly. In fact, I hear quite the opposite. A great many Iowans have told me they are not happy with legislation being rammed through the Congress without their elected representatives even having an opportunity to read it. If Members of Congress don't have a chance to read a bill, we can bet the American public doesn't have a chance to understand it. I suppose that is fine if we believe we should pass a bill first and let the American people find out what is in it later, as Speaker PELOSI once famously suggested about the health care reform bill. We have to pass it, she said, and then we will find out what is in it. And then there is a rude awakening that now in this 2,700-page health care reform bill, we are finding out there are a lot of bad things in it, a lot of bad things that we warned the public about and warned the Democrats about as well. However, if one thinks, as I do, that we should be listening to those who elect us, one would have to conclude that a more deliberative process is needed, not less.

The rules of the House allow for quick consideration of legislation, but the Senate is supposed to be different and historically has been different. When the majority leader says the Senate is not operating efficiently, he means we are not approving the legislation he wants on the timetable he demands. The simple historical fact is the Senate is not designed for that kind of efficiency. However, for a period after the 2008 elections, the Democrats had 60 Members in the Senate. That is enough votes to shut off debate and amendments without a single Republican cooperating. Naturally, the majority party couldn't resist the temptation and shut Republican voices out of every aspect of the legislative process because they had the votes to do it. Not only did they use their supermajority to prevent Republican amendments on the floor of the Senate, but since they didn't need Republican votes to pass a bill, they cut us out of the process of developing the legislation.

In my experience as a former chairman and now ranking member, some of the best examples of bipartisanship happen at the committee level. The Senate committees are where Senators of both parties often work in a bipartisan way to delve into the details of the legislation and iron out imperfections. This is how most bills are supposed to be handled.

I often tell people who are cynical about all the partisanship they see on TV that there is a lot of bipartisan work that goes on that they never see because only controversial things get

on television. When a committee process is working and the Democrats and Republicans are working together to get a bill and everything is going smoothly, no journalist is going to pay any attention to that. But that goes on in the committee process, and that process can be dry and it can be technical. Senators of both parties sitting around a table discussing where to place a comma doesn't make the breaking-news alerts. Nevertheless, the committees are where much of the hard bipartisan work of the Senate is done.

In recent years the Democratic leaders prefer to write bills behind closed doors without Republican input. I suppose the health care reform bill is the best example of that, but there are others as well. They have then used a parliamentary trick to bring them right to the Senate floor. I suppose I shouldn't use the words "parliamentary trick" because there is a rule XIV, but that bypasses the usual committee process where we build consensus between the political parties. If Republicans are shut out of having any significant input on the front end and are blocked from having any amendments on the back end, is it any wonder we don't vote for the majority leader's motion to cut off debate?

Despite the bad blood caused by the tactics I have described, I had hoped and believed that after the 2010 elections, things would be different. When Americans elected Republicans to a sizeable majority in the House of Representatives—larger than any election since 1938—and at the same time enlarged our representation in the Senate to 47 Members, I thought the majority party would recognize that they had to work with Republicans. With 47 Members, it was no longer possible under the Senate rules for the majority party to shut Republicans out of the legislative process and still expect to ram their agenda through. So I naturally assumed the Senate would resume its usual tradition of bipartisan cooperation involving open debate and amendments from both sides—in other words, the way the Senate had historically functioned.

The majority leader didn't see it that way and continued to shut Republicans out of the process. In fact, if he had allowed an open debate and amendment process on many of the bills he sought to bring up, we could have gotten a lot more accomplished than we have. One week in June last year, we passed four controversial pieces of legislation because that process worked. It involved Republicans seeking things. But most of the time that doesn't happen. Sure, it would have taken more time under that amendment process and the deliberative process to consider each bill than the majority leader might have preferred to be given to it. He and his caucus might also have had to vote on Republican proposals instead of only legislation of his choosing. But is there anything wrong with a Republican offering an amendment now and then,

even if that amendment loses? Some Republican amendments might have embarrassed Democrats by forcing them to vote on issues they would rather avoid. Is there anything wrong with voting on some tough issues from time to time? Some Republican amendments might have attracted enough Democratic votes to actually pass. Perhaps that is exactly what the majority leader might want to avoid. He seems to want total control over the agenda. Majority Leader REID has said as much in private. He told Senator MCCAIN flatout that “the amendment days are over.” How can he say that?

There is a longstanding tradition here in the Senate that all voices be heard and that amendments get full hearing regardless of the party of the sponsor. For example, tax and trade policies aren’t exactly areas of natural agreement between the two parties. Despite that fact, when I was chairman of the Senate Finance Committee, I helped put together several bipartisan bills. I, a Republican, worked in partnership with Senator BAUCUS, a Democrat, to produce bipartisan bills that we could both live with. Even when we were starting with a bipartisan bill, Senator BAUCUS wanted to make sure his fellow Democrats had a chance to offer amendments, and I respected that, and if he were chairman, he would have respected that for us Republicans. It took a lot of time and effort, but that is what we have to do in the Senate if we actually want to get something done rather than simply blame the other side if we fail.

The Senate has been called the greatest deliberative body in the world because it was specifically designed to proceed at a measured pace and guarantee that the rights of the minority party are protected from what political philosophers called the “tyranny of the majority.”

In 1788, the father of the Constitution, James Madison, wrote in *Federalist Paper No. 10*:

Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.

In 1788 James Madison was warning us about the superior force of an overbearing majority, the reason the Senate was set up to make sure the overbearing majority of the other body, where the majority rules, didn’t do stupid things.

Those arguing for abolishing the filibuster sometimes talk about majority rule as though this is some fundamental principle. On the contrary, the aim of our Constitution is to protect the individual rights of all Americans, not the right of the majority to impose its will on an unwilling minority. In fact, James Madison was very con-

cerned about what he called factions gathering together to impose their will on others. So I wish to quote again from *Federalist No. 10*. Before I start that quote, let me say for the benefit of people that I think when he used the word “faction,” for the most part he was speaking about political parties.

If a faction consists of less than a majority, relief is supplied by the Republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution.

When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens.

To secure the public good and private rights against the dangers of such a faction, and at the same time preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.

That was a long quote, so let me say that in other words, Madison is saying that an important goal of the U.S. Constitution is to protect “the public good and the private rights” from a temporary majority trying to impose its will on the minority. This is evidenced throughout the Constitution. We call it checks and balances. We see it in the separation of powers between the three branches of government, and we see it in our system of federalism dividing power between States and the Federal Government. It also helps explain our bicameral legislative branch, and, of course, what I am talking about here is the unique structure of the Senate.

In *Federalist No. 62*, also usually attributed to the father of the Constitution, James Madison, he explains:

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 of this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations.

Madison wrote that in 1788, but it is still applicable in 2012.

So kind of repeating, the purpose of the Senate is to save us from “the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.”

There is a place for the passions of the moment in any republican form of government or any democratic society, and that place for the passions of the moment to be reflected is in our House of Representatives. But imagine if our only legislative body were the House of Representatives. Right now, that would mean Speaker BOEHNER would control the entire legislative agenda, and the priorities of the House Republicans would be the only legislation that would have a chance of passing.

Then, once the Democrats gained control in some future election, Repub-

licans would have virtually no ability to have their views considered.

This is a teeter-totter approach to governing. This teeter-totter would not lead to thoughtful legislation that protects individual rights and balances the views of all Americans.

You will also note that Madison references examples from proceedings within the United States at that particular time. Many State legislatures in the early days of our Republic were unicameral, with frequent elections and also with weak executives. This led to many instances where a temporary majority faction would gain control and quickly pass legislation that advantaged the majority at the expense of the minority.

It is also the case that the Congress, under the Articles of Confederation, was unicameral, which caused a lot of instability as described, again, by Madison in *Federalist 62*:

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.

The staggering of the terms of Senators was partly done to provide stability, preventing temporary majorities from acting hastily and trampling on the rights of the minority.

Only one-third of the Senators are up for reelection every 2 years, unlike the House of Representatives, where all Members are up for reelection every 2 years. Because only one-third of the Senators are up for reelection at once, it is less likely that one party can sweep the election and gain control of the entire legislative branch of government in one election. Here we see how the Senate was specifically designed to prevent the tyranny of the majority.

In *Federalist Paper 66*, Madison, the father of the Constitution, continues his explanation of the unique role of the Senate—the unique role of the Senate—

... there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn.

In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind?

Now, I want you to contrast—with these quotes from Madison—the role the father of our Constitution says the Senate is intended to play to the present debate going on in the Senate that the rules ought to be changed and the majority leader’s vision for how a newly altered Senate would operate.

One faction, the Democratic Party, would be able to ram through massive pieces of legislation with little or no input from duly elected Senators who happen to be from another political party. And what if Republicans are not happy with being shut out of the legislative process at every stage? Well, the majority leader explained to one freshman Republican Senator: "You can always vote against the bill."

Not only does this take-it-or-leave-it approach effectively disenfranchise all those Americans who elected Senators from the minority party to represent their views, it also leads to poorly thought out legislation. Since the proposed changes to the Senate rules would make the body more like the House of Representatives, let's take another look at how that Chamber operates.

Although the House is designed to reflect the will of the current majority, the trend toward the majority party shutting out the minority party in that body has increased over time. Some people trace this trend to the last decade of the 19th century when the Speaker of the House was a man named Thomas Brackett Reed.

Then-Speaker Reed strengthened the power of the Speaker of the House of Representatives and sought to diminish the rights of the minority party. He once used his position to unilaterally change the interpretation of the quorum rule to prevent Members of the minority party from blocking a measure by refusing to vote in a quorum call. This incident was called the "Battle of the Reed Rules."

Then-Speaker Reed famously said: "The best system is to have one party govern and the other party watch." This attitude earned that Speaker of the House, whose name was Reed—they called him Czar Reed.

Do we really want another "Battle of the Reed Rules" like we had over a century ago in the House of Representatives? Wouldn't that be going backwards?

Ironically, the House of Representatives under Speaker BOEHNER has actually allowed more opportunity for the minority party to affect legislation than the current Senate majority leader. Senate Minority Leader MCCONNELL has cited data from the Congressional Research Service showing that the Democrat minority party in the House has had 214 occasions to affect legislation this year compared to only 67 for the Republican minority in the Senate.

When the House of Representatives allows for more input from the minority party than the Senate, which is supposed to be the deliberative body, it seems to me something is very wrong.

It is true that the cloture rule and the various different procedures that are called filibusters are not found in the Constitution. But changes to the Senate rules that some in the Democratic caucus are proposing would fundamentally transform the character of the Senate in a way that the Founders

never intended and best expressed by James Madison.

The proposed gutting of the Senate's historic rules and traditions threatens to replace the principle of the rights of the minority, so important to James Madison and our other Founders, with a new principle that the might of the majority makes right. The fact that the majority leader is contemplating doing so on a partisan basis by ignoring existing Senate rules is outrageous. Can you imagine ignoring the rules to change the rules?

I know this unprecedented power grab makes even Democratic Senators uneasy. Other Democrats who find this proposal tempting and who have not yet served in the minority will find they have a rude awakening once they have to live under the new regime they might help create.

To all my colleagues who might be inclined to support this fundamental transformation of the Senate, I will repeat once more Madison's warning about temporary majorities in the heat of passion enacting legislation: "... measures which they themselves will afterwards be the most ready to lament and condemn."

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

#### THE FARM BILL

Ms. KLOBUCHAR. Madam President, I am here today to talk about the need for action on a 5-year farm bill for our farmers and our rural communities. The Senator from Iowa, who just spoke, understands how important this farm bill is. I know the Acting President pro tempore, from the State of New York, understands how important this farm bill is.

This summer, farmers in the Corn Belt of our country waited, sometimes in vain, for rain that could either make or break an entire year of work. Many of them lost their entire crop.

This fall, sugar beet farmers along the Red River Valley in Minnesota and North Dakota waited for dry weather because they needed that to pull out the last of their crop. And right now, at this very moment, farmers, ranchers, and rural communities throughout the country continue to wait. But this time they are not waiting for weather. They are not recovering from weather. They are waiting for a new farm bill. In fact, they have waited 167 days since the Senate passed the bipartisan farm bill this June, and they have waited 66 days since the 2008 farm bill expired in September.

Unlike the drought this summer and the hurricane that hit the State of the Acting President pro tempore this fall, the failure to complete a farm bill is entirely preventable. Inaction in the House of Representatives is hurting farmers right now. Without a new farm bill, dairy farmers have lost their safety net. In fact, prices may go to the 1939 levels. Talk about moving back-

ward; that is what will happen if we do not get this farm bill done.

Livestock producers operate without key disaster programs without this farm bill, and farmers and rural communities are left guessing about what rules they will operate under as they plan next year's crop.

These are not small things. What kind of crop insurance are they going to be qualified for? Is there going to be some kind of safety net? They have absolutely no idea because we wait and we wait and we wait for the House of Representatives to act. They did pass a farm bill through their committee. I liked ours better, but they got it through the committee. But guess what. They have not been able to bring it to the floor for a vote, and our farmers and our ranchers and our people in our rural communities wait, and they wait, and they wait.

I believe there are good reasons we can finish the farm bill this year. There is already a path forward to complete work on a farm bill and have it signed by the President at the end of this year. The farm bill passed in the Senate, as we all know. It passed with strong bipartisan support. It was approved by a vote of 64 to 35. Thanks to Chairman STABENOW's leadership and the leadership of Ranking Member ROBERTS, we were able to get this bill through. We voted on nearly 80 amendments. We did our job in the Senate.

The Senate farm bill saves money. It would reduce the deficit by \$23 billion over the next 10 years. That is a savings over the last farm bill. The Senate farm bill also makes major reforms, such as eliminating direct payments and further focusing farm payments on our family farmers.

It extends disaster programs for livestock producers and it continues credit provisions to help our farmers get through tough times. It creates a public-private partnership to fund agricultural research to give farmers the tools they need to stay competitive and feed a growing world.

When Bill Gates comes and talks to me about the farm bill, you know this farm bill is more than just about some farmers in Minnesota. It is about feeding our country, it is about feeding the world, it is about the research we need to do to make sure we have the most efficient crops; that we are developing crops and we are developing livestock and varieties of crops and farm products that can feed the world.

This farm bill works to eliminate fraud and waste throughout the farm bill to ensure these programs are efficient and targeted. Passing this farm bill is important, and that is why 235 agriculture, conservation, research, and energy organizations signed a letter this November to leadership in the House urging that they pass a farm bill before the end of the year.

Our farmers and agricultural communities understand that tough budgetary choices need to be made. That is why the Senate Agriculture Committee actually came forward and said: OK, we