over the debt limit is an absolutely appropriate time to talk about reforming Washington's future spending.

President Obama agreed to spending cuts the last time he asked for an increase in the debt limit. Now the President says he wants his credit limit increased without any effort to reduce future spending. And, of course, we all remember when he was a Senator he spoke out against raising the debt limit. He once called the need to increase the debt limit ''a failure of leadership.'' But that was then. This is now.

The White House has floated gimmicks such as issuing a $1 trillion coin or using the 14th amendment to raise the debt limit without congressional approval. And now the President won't negotiate responsible spending at all. His policies—his policies of the past 4 years—have buried our children and our grandchildren under a mountain of debt. America needs real budget reform, but President Obama insists on playing politics with our country's credit rating. Hard-working American taxpayers have to balance their budgets. They understand what the President does not.

The President bragged in his press conference last week that ''it's been a busy and productive 4 years, and I expect the same for the next 4 years.'' Well, it looks like he means we can count on 4 more years of wasteful Washington spending.

This has to stop. It is time for President Obama to finally keep his promise to get America's finances in order.

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

The PRESIDING OFFICER (Ms. WARREN). The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EXTENSION OF MORNING BUSINESS

Mr. HARKIN. I ask unanimous consent that the period for morning business be extended until 5:30 p.m. today and that all provisions of the previous order remain in effect.

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

THE FILIBUSTER

Mr. HARKIN. Mr. President, I come to the floor today to give some remarks that I give about every 2 years, I guess, when the Senate reconvenes for a new Congress. Now this is a new Congress, so once again I come here to point out that we need to make some changes in the way we operate.

I have been in this body for 28 years. I am currently eighth in seniority. As soon as Senator KERRY becomes Secretary of State, I will be seventh in seniority. I am proud to represent the great State of Iowa; I am proud to be a Senator, to serve in this illustrious body. I have been in the majority and minority I think up to five times in the Senate. Before that, I served 10 years in the House. I love the Senate. It is a wonderful institution—it is, as envisioned by our Founders.

The Senate at times has been frustratingly slow to encompass the changes necessary to the smooth functioning of our country. I mention in particular the long, long struggle for civil rights and how that was held up by a small minority—which happened to be in my party, by the way, at that time.

Nonetheless, the Senate through the years has really been the Chamber that takes a long and hard look at legislation, where we have the right to amend, where we have the right to discuss and to embark upon discourse on legislation in a manner that allows even the smallest State to be represented as much as a large State. That is not true in the body that both the occupant of the chair and I used to serve in, the House. There, as you know, large States tend to dominate because we have most of the Members. But here, a Senator from Connecticut is just as important as a Senator from California or a Senator from Iowa or—let's see, what is the least populous State? I think Wyoming or Alaska—is equal to a Senator from New York or Florida or Texas or California. This has been a great equalizing body.

Having served here for this time, I think I have some perspective on this Senate. As I said, at its best, this Senate is where our great American experience in democratic self-government most fully manifests itself. It is in this body that the American people, through their elected officials, can come together collectively to debate, deliberate, and address the great issues of our time. Through our Nation's history, it has done so. In the nearly quarter of a century I have been here—well, wait, it is 28 years that I have been here, so it is over a quarter of a century—the rights of Americans have been expanded: Americans with disabilities; we have ensured health insurance for millions of Americans.

In the early 1990s we voted here on the course to eliminate the national deficit in a generation, and we are on our way to doing that.

It is because of my great reverence for this institution and my love for our country that I come to the floor today. One does not need to read the abysmal approval ratings of Congress to know that Americans are fed up and angry with this broken government. In too many critical areas, people see a Congress that is riven with dysfunction. Citizens see their legislature going from manufactured crisis to manufactured crisis. They see a legislature that is simply unable to respond effectively to the most urgent challenges of our time.

Of course, there are a myriad of reasons for this gridlock—increased partisanship; a decline in civility and comity; too much power, I believe, in the hands of special interest groups; a polarizing instant-news media; and, I might add, the increasing time demands on all of us here involved in raising large amounts of money to run for reelection. But make no mistake, a principal cause of dysfunction here in the Senate is the rampant abuse of the filibuster.

It is long past time to make the Senate a more functional body, one that is better able, as I said, to respond to our Nation's challenges. The fact is that I am not a Johnny-come-lately to filibuster reform. In January of 1995—when I was in the minority, I might add—I first introduced legislation to reform the filibuster. We got a vote on it. Obviously, we did not win, but I made my points then, and I engaged in a very good debate with Senator Byrd at that time, in 1995. You can read it in the RECORD. I think it was probably January 8, if I am not mistaken, of 1995.

At that time, I submitted a resolution because, as I said, I saw an arms race in which each side would simply escalate the use of the filibuster and abuse procedural rules to a point where we would just cease to function here in the Senate. I said that at the time. I said that what happens is when the Democrats are in the minority, they abuse the filibuster against the Republicans. Then when the Republicans become the minority, they say: You Democrats did it to us 20 times, we will do it to you 30 times. Then when it switches again and the Democrats are in the minority, they say: Republicans did it to us 30 times, we will do it 50 times. We will teach them a lesson.

On and on, the arms race is escalated. I said at the time that we might get to a point where this body simply cannot function, and sadly that is what happened.

That is why 18 years after I first submitted my proposal, I believe reform is never more urgent and necessary. The minority leader stated that reformers advocate ''a fundamental change to the way the Senate operates.'' To the contrary, it is the abuse of the filibuster, not the reforms being advocated, that has fundamentally changed the character of this body and our entire system of government. Again, I will point out now and I will point out repeatedly in my remarks that Democrats are not guiltless in this regard by any means, but the real power grab and the real abuse has come about when the Republicans have abused this tool—one that was used sparingly for nearly 200 years.

What has happened is that effective control of the Senate and of public policy has been turned over to the minority, not to the majority that has been elected by the American people. In many cases, those who are warning of a fundamental change to the nature and culture of the Senate are the very ones

who have already carried out a revolutionary change. Those of us who are seeking to reform the filibuster rules are not the ones who are doing a nuclear option or blowing up the Senate. Those who have abused the filibuster are the ones who have already changed the character of the Senate. What we are trying to do is restore some functionality to the Senate so that the Senate can operate with due regard for the rights of the minority. I will talk about that more in a moment.

The minority leader has recently called the filibuster ''near sacred.'' I am sorry, he could not be more incorrect. The notion that 60 votes are required to pass any measure or confirm any nominee is not in the Constitution and until recently would have been considered a ludicrous idea, flying in the face of any definition of government by democracy.

Far from considering the filibuster ''near sacred,'' it is safe to say that the Founders would have considered a supermajority requirement sacrilegious. After all, they experimented with a supermajority requirement under the Articles of Confederation, and it was expressly rejected in the Constitution because the Framers believed it had proven unworkable. That is right, the Articles of Confederation basically had a supermajority requirement, and they found that did not work. That is why, as I will mention in a moment also, the Framers of the Constitution set out explicitly five different times that this Senate requires a supermajority. You would have thought that if they wanted a supermajority for everything, they would have said so. No, they specified treaties, impeachments, expelling a Member—those require a supermajority as expressly spelled out in the Constitution.

The filibuster was once a tool used only in rare instances—most shamefully, as I said earlier, to block civil rights legislation. But across the entire 19th century, there were only 23 filibusters, in 100 years. From 1917, when the Senate first adopted rules to end filibusters, until 1969 there were fewer than 50—during all those years. That is less than one filibuster a year. In his 6 years as majority leader, Lyndon Johnson only faced one filibuster.

According to one study, in the 1960s just 8 percent of major bills were filibustered. Think about all the legislation that was passed—civil rights, Voting Rights Act, Medicare, Medicaid, Older Americans Act, Pell grants, Higher Education Act, Elementary and Secondary Education Act. Think of all the legislation passed in the 1960s. Just 8 percent was filibustered. In contrast, since 2007 when Democrats regained control of the Senate, there have been over 380 motions to end filibusters—380. This does not even include the countless bills and nominations on which the majority has not even tried to obtain cloture either because of a lack of time or because we knew it would be fruitless.

The fact is that for the first time in history, on almost a daily basis, the minority—and in many cases, just one Senator—routinely is able to and does use the threat of a filibuster to stop bills from even coming to the floor for debate and amendment. Unfortunately, moreover, because of outdated rules, an actual filibuster rarely occurs. Too often it is merely the threat of a filibuster, and that is the end of it; it is not debated or anything.

Let's get beyond the outrageous idea that Democrats, in proposing rules reform, would be initiating a revolution. In actuality, the changes that are seriously under discussion right now are simply a modest reaction to decades of escalating warfare which has culminated in 6 years of unrelenting minority obstructionism.

Because I feel so passionately that reform is so badly needed, I fully support the commonsense proposals from Senator MERKLEY and Senator UDALL. Their proposals would simply require the minority to actually filibuster, actually debate. A Senator would have to come to the floor and explain his or her opposition or offer his or her views on how a bill could be improved. Under the proposed reforms, the Senators would actually have to make arguments, debate, and deliberate. Senators would have to obstruct in public and be held accountable for that obstructionism.

Perhaps because this is such a commonsense reform, Republicans who have come to the floor have not addressed why they oppose rules that would require more transparency. Republicans have failed to explain to this body or to the public why a minority—again, the group the public chose not to govern here—why should they be able to kill a nominee by stealth? Republicans have failed to explain why they oppose more debate and more deliberation. Why do they oppose more debate, more deliberation, which is puzzling given that they profess that their sincere concerns are animated by the desire to foster debate and deliberation. But that is not what is happening. In stealth, they oppose a bill. They do not come to the floor, and they fail to defend why they do not even do that, why they will not even come to the floor and speak.

Instead, Republican after Republican has come to the floor and denounced what they claim are Democratic efforts to eliminate the filibuster and to, in their words, ''fundamentally change'' this body. The fact is that they are attacking the wrong plan. The truth is, under the reforms proposed either by Senator UDALL or Senator MERKLEY or one they have together or even under my proposal, the filibuster would still be a tool. Sixty votes would be needed to enact a measure, to confirm a nominee. Under their proposal, it would still require 60 votes.

Under my proposal as I first laid out in this body in 1995, I said: You know, sure, OK, on the first vote after you have the cloture motion filed, the first vote would require 60 votes.

If they didn't have 60 votes, they would have to wait 3 days, file another cloture motion, and then they would need 57 votes. If they didn't get 57 votes, they would have to file another cloture motion, wait 3 days, and they would need 54 votes. If they didn't get that, they would file another cloture motion, wait 3 days, and they would need 51 votes.

Under this proposal I have worked out with other groups and other people over the last almost 20 years, the fact is the filibuster could be used for what it was intended—slow things down. I believe the Senate ought to be a place where we slow things down. It should not be a place where just a few Senators can kill a bill. This should be a place where the filibuster is used not to slow things down but is actually used to kill a bill.

What I have proposed would be a period of time—actually up to about 16 days—where someone could slow a bill down, but eventually the majority would be able to act. I mean, what a revolutionary idea. The majority should be able to prevail. Think about our own elections. I guess maybe it could be extended further to say it is not enough to get 51 percent, or the majority of votes, we have to get 60; if they don't get that, they don't take office. What a revolutionary idea that somehow the majority should be able to move legislation.

I also agree there should be the rights of the minority to debate, discuss, and amend legislation. Again, the majority, after ample debate and deliberation, should have the power to govern, to enact the agenda the voters voted for, and to be held accountable at the ballot box. I guess I fundamentally believe in democracy. Maybe that is a failing on my part. I fundamentally believe the majority should rule, with respect for rights of the minority.

As I have noted, a revolution has already occurred in the Senate in recent years. Never before in the history of this Senate was it accepted that a 60-vote threshold was required for everything. This did not occur as a constitutional amendment or through any great public debate. Rather, this occurred because of the abuse of the filibuster. The minority party has assumed for itself absolute and virtually unchecked veto power over all legislation; over any executive branch nominee, no matter how insignificant the position; over all judges, no matter how uncontroversial.

In other words, because of the filibuster, even when a party has been resoundingly repudiated at the polls, that party retains the power to prevent the majority from governing and carrying out the agenda the public elected it to implement. In this regard, over 380 filibusters is not some cold statistic. Each filibuster represents a minority of Senators—sometimes a mere

handful—who are preventing the majority of the people's representatives from governing.

As one example, Republicans repeatedly filibustered a motion to proceed to legislation that would require more disclosure of campaign donations. The DISCLOSE Act is what it was called. A substantial majority of Senators supported the bill. Polling showed that 80 percent of the public believed the Supreme Court's decision in Citizens United was wrong, that we needed to know more disclosure of campaign contributions. Yet a small minority of Senators was able to prevent the bill from even being debated on the floor of the Senate, let alone receiving an up-or-down vote. That is just one example.

In the last two Congresses, consider some of the measures blocked by the minority, measures that received majority support on a cloture vote: the DREAM Act, Bring Jobs Home Act, Small Business Jobs and Tax Relief Act, Paying a Fair Share Act of 2012, Repeal Big Oil Tax Subsidies Act, Teachers and First Responders Back to Work Act, American Jobs Act of 2011, Public Safety Employer-Employee Cooperation Act, Paycheck Fairness Act, Creating American Jobs and Ending Offshoring Act.

Again, it is not that the bills were filibustered. The right to even debate these bills and vote on them was filibustered. It is one thing if we are on the bill and have a filibuster. No, we could not even debate them even though a majority of Senators voted for cloture. Not 60 votes but a majority. So the majority was thwarted from the ability to even bring these up and debate them or even letting people offer amendments.

It used to be that if a Senator opposed a bill, he or she would engage in a spirited debate, try to change people's minds, attempt to persuade the public, offer amendments, vote no, and then try to hold Members who voted yes accountable at the ballot box. Isn't that what it is about? In contrast, today—and to quote former Republican Senator Charles McC. Mathias in 1994:

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

When Senator McC. Mathias spoke and described it as an epidemic, in that Congress there were 80 motions to end filibusters. That is a number which pales in comparison to today, when we have had 380 motions to end the filibuster. To grind this body to a halt, all the minority party has to do is resort to the filibuster of a motion to proceed.

Under the critical jobs legislation, all the minority party had to do was block the motion to proceed and then they turn around and blame the majority for failing to address the jobs crisis. We had jobs bills; we could not get them up. We had jobs bills, but then they blamed us for failing to address the jobs crisis. It is no surprise that Americans are fed up with the broken government. As that list of blocked bills demonstrates, the anger is fully justified. In too many critical areas what people see is a dysfunctional Congress that is unable to respond collectively to the urgent challenges we face.

As the Des Moines Register recently noted:

> One message candidates heard from voters this election was contempt for partisan gridlock in Congress. One of the biggest obstacles to congressional action is the profusion of filibusters in the Senate.

It is no surprise that editorials throughout the country have recognized that the use of the filibuster must be changed.

USA Today has noted that the ''filibuster has become destructively routine.''

The Roanoke Times noted that ''filibuster reform alone will not fix everything that is wrong with Washington, but it would remove one of the chief impediments to governing.''

The Minnesota Star Tribune stated:

> Most Americans live under the impression that representative democracy's basic precept is majority rule. Sadly, that's no longer the case in the U.S. Senate, where the minority party has so abused the filibuster that it (the minority) now controls the action—or more accurately, the inaction. This perverts the will of the voters and should not be allowed to stand.

Mr. President, I ask unanimous consent that the copies of these editorials, and others from around the country, in support of filibuster reform be printed in the RECORD.

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

[From the StarTribune, Dec. 25, 2012]

FILIBUSTER IN NEED OF MAJOR OVERHAUL

(By Editorial Board)

Most Americans live under the impression that representative democracy's basic precept is majority rule. Sadly, that's no longer the case In the U.S. Senate, where the minority party has so abused the filibuster that it (the minority) now controls the action—or more accurately, the Inaction.

This perverts the will of the voters and should not be allowed to stand. As its first order of business next month, the new Senate should reform the filibuster rules in a way that restores fairness to the majority, preserves reasonable rights for the minority and keeps faith with the intent of the Constitution and the voting public. Democrats Jeff Merkley of Oregon and Tom Harkin of Iowa have solid proposals for their fellow senators to consider. What they should not consider is keeping the filibuster rules the way they are.

Let's be clear. This is not a partisan matter. The abusers in this case happen to be Republicans. They have masterfully mounted hundreds of filibusters in recent years to frustrate the majority Democrats and, in the process, have remade their leader, Mitch McConnell, into the Senate's de facto majority leader. But Democrats could—and probably would—stoop to the same depths the next time they're relegated to minority status.

As an idea, the filibuster has merit, and when used more sparingly in the past, it has won support from this page. Not rushing to judgment is a main function of the Senate, which was intended as a deliberative body. Extending debate also protects important rights for minority views. But the minority's clear abuse of those rights has gone beyond reason.

Here's the problem. On nearly every major bill, rather than accept a loss by a simple majority, the minority party launches a filibuster—a procedure that pushes the bill into a limbo of theoretically endless ''debate'' unless a supermajority of 60 votes can be rounded up to stop it. Getting 60 senators to agree on anything is nearly impossible. So the wheels of government grind to a halt. It's a perfect tactic for the minority, because the public tends to blame the majority for ineffectual leadership.

But it's worse than that. To mount and maintain a filibuster takes no real effort or conviction. The minority party never has to stand up on the Senate floor to defend its position. There is no real debate, no real deliberation on the nation's important business, or on the scores of judges and other federal officials whose nominations the Senate must confirm.

Not since 1970, when ''silent filibusters'' were adopted, have senators had to hold the floor in the manner made famous by the film ''Mr. Smith Goes to Washington'' (1939) or the endless tag-team ordeals that Strom Thurmond and other southern senators employed against civil-rights legislation in the 1960s.

Even In those bygone days, senators reserved filibusters for extraordinary moments. But now they are routine. In his six years as majority leader, Harry Reid has faced 380 filibusters. Lyndon Johnson, in his six years as majority leader (1955–1961), dealt with one.

''If you had a child acting like this, you'd worry about him,'' former Vice President Walter Mondale told a University of Minnesota audience last week. As a senator, Mondale led efforts to reform the filibuster in 1975, but clearly his changes weren't enough to halt the abuse.

Merkley's proposal would bring back the traditional ''talking filibuster.'' If more than half of senators voted to end debate, but not the 60 votes required, then senators would have to hold the floor with talking marathons.

Harkin offers a ''sliding filibuster.'' If the 60-vote threshold to halt a filibuster isn't met, a 57-vote threshold kicks in three days later, then a 54-vote threshold three days after that. Finally, after nine days, the bill could pass by a simple majority.

A third option is to get rid of the filibuster altogether. A pending lawsuit from Common Cause proposes just that, arguing that requiring a supermajority is unlawful except on treaties and other Matters enumerated in the Constitution.

As currently practiced, the filibuster is a cynical affront to voters and to the precepts of representative democracy. It does not extend debate in a meaningful way. It does not make the Senates deliberative body. It does more harm than good. It should be reformed at the earliest possible moment

---

[From the Des Moines Register, Dec. 6, 2012]

TIME HAS COME TO END SENATE LOGJAM

(By The Register's Editorial Staff)

One message candidates heard from voters this election was contempt for partisan gridlock in Congress. One of the biggest obstacles to congressional action is the profusion of filibusters in the Senate.

Now is the time to reform Senate rules to break that legislative logjam.

It's a longstanding tradition for senators to block legislation by merely talking it to

death, known as a filibuster. Though by definition a filibuster means literally obstructing Senate procedures by continuous speech by members on the floor, a senator can have the same effect these days by simply threatening to filibuster. That is increasingly common.

The only way to stop a filibuster, according to the Senate's rules, is by a ''cloture'' vote, which requires the support of three-fifths of the body, or 60 senators. The upshot is a minority of senators can block the will of the majority.

In the past six years alone, 385 cloture motions have been filed in the Senate calling for votes to end filibusters. That is more than all of such motions filed in the 70-year period after the cloture-vote rule was created, according to a report by the Brennan Center for Justice. This has become so common that it is assumed a 60 percent supermajority is required for all votes.

That was not the intent of the framers, however. The Constitution requires a supermajority vote for a limited number of issues, which means only a majority is necessary on all others.

Still, the filibuster is deeply rooted in Senate tradition. The Senate cherishes the right of any senator to be fully heard. Thus, the rules say no senator ''shall interrupt another senator in debate without his consent.'' In other words, one senator can hold the floor as long as he or she has the capacity to speak.

Originally one had to actually talk continuously to prevent a bill coming to a vote, which Southerners did to great effect to block civil rights laws in the 1950s. Indeed, the late Sen. Strom Thurmond of South Carolina still holds the record for talking 24 hours and 18 minutes in August 1957. The previous record holder was Louisiana Sen. Huey Long who would read aloud recipes, instructions on how to fry oysters and the occasional ''rambling discourse on the subject of 'potlilkker','' according to one account.

The Senate has sought to curb the filibuster before. In 1917, the rules were changed to provide for a way to end a filibuster if two-thirds of the body is in favor, or 67 votes. The threshold was lowered to three-fifths, 60 votes, in 1975.

Some argue that changing the rules would destroy the Senate, but the party making that case is usually in the minority and is using the filibuster to frustrate the majority. Both parties are guilty of abusing the rules to make it next to impossible for the Senate to perform its duty, which is to act on legislation. Both parties should agree on a compromise to reform the filibuster.

The Senate should agree on a rule change that recognizes the Senate's respect for hearing the views of the minority and to preserve the Senate's role in slowing reckless proposals from the House for more thoughtful consideration.

But it should not preserve the status quo, which means that nothing gets done in the Senate, and by extension nothing gets done in Congress. That is neither the intent of the Constitution or of the American people.

[From the Los Angeles Times, Dec. 12, 2012]

GO NUCLEAR ON THE FILIBUSTER

(Editorial)

Harry Reid offers a plan to curb a tactic that has created gridlock in Congress. It's a good start.

Nothing exposes partisan hypocrisy quite like the filibuster, that irksome parliamentary rule that allows a minority of U.S. senators to block legislation, judicial appointments and other business by requiring a 60-vote majority to proceed to a vote. Almost invariably, the party in power considers the filibuster to be an enemy of progress that must be squashed, while the minority fights to preserve it at all cost. That the same players often find themselves arguing from opposite sides depending on whether they control the Senate or are in the minority hardly seems to trouble most lawmakers.

So comes now Senate Majority Leader Harry Reid (D–Nev.) with a campaign to alter the filibuster rule using the so-called nuclear option, which if invoked on the opening day of the new legislative session would allow senators to change the rules by majority vote. Republicans are appalled that he would consider such a ploy, even though they floated the same proposal when they held the majority in 2005. Back then, reform was blocked when a Gang of 14 senators led negotiations that kept the filibuster largely intact, and top Senate Republicans are reportedly reaching out to their Democratic counterparts in an effort to repeat that ''success.'' We hope they fail.

For the record, we were rooting for the Republicans to go nuclear in 2005, and we feel the same way with Democrats in control. This is not a venerable rule created by the Founding Fathers to protect against the tyranny of the majority, but a procedural nicety that has been altered many times throughout history. In its current incarnation, it goes much too far and has produced gridlock in Congress.

Reid reportedly aims to return to the era of the ''talking filibuster,'' when senators who wanted to hold up a bill had to stand up and debate it ceaselessly, day and night. This doesn't go quite far enough; Reid should also place limits on the number of opportunities for senators to mount filibusters, and put the burden on minority opponents by forcing them to come up with 40 votes to sustain a filibuster, rather than requiring the majority to drum up 60 votes to end it. Nonetheless, Reid's plan is a nice start, requiring those who want to hold up legislation to do so publicly and to use their oratorical skills to explain why such a move is justified.

Even many Democrats realize that someday they'll be in the minority, and fret that a future Republican-dominated chamber will use Reid's precedent to put even stricter limits on filibusters. But that's no reason not to approve Reid's proposal. If some future Senate majority wants to go thermonuclear, that's a debate for another day.

[From the Baltimore Sun, Dec. 11, 2012]

ENDING FILIBUSTER ABUSE

Our view: In a matter of weeks, incoming Senators can strike a blow for democracy and approve badly needed reforms to the chamber's dysfunctional filibuster rule.

The announcement last week that South Carolina's Jim DeMint is leaving his Senate seat to run the Heritage Foundation caused some in Washington to wishfully think that perhaps the move might usher in a more congenial, if not cooperative, outlook in the U.S. Senate. But while Mr. DeMint set the gold standard for ideological purity (denouncing his own party's candidates from time to time when they failed to measure up to his tea party, ultraconservative viewpoint), there are still plenty in the GOP with the flexibility of a ramrod.

The Senate's legislative logjam was well-documented long before the ''fiscal cliff' approached. Democrats may hold a majority—and will even enjoy a slightly larger one next year courtesy of the nation's voters—but the filibuster has become so abused that it's simply become a given in the chamber that passing legislation of any substance requires a 60-vote super-majority. That's the minimum required to invoke cloture and prevent or curtail a filibuster. Even getting a presidential nominee approved has become maddeningly difficult, no matter how qualified or uncontroversial the prospective judge or appointee may be.

[From Cleveland.com, Nov. 27, 2012]

GET THE SENATE OUT OF ITS OWN WAY

(By the Plain Dealer Editorial Board)

The founders clearly intended the U.S. Senate—with its six-year terms, its guarantee of equal representation for every state and, initially, the indirect election of its membership—to be a brake on the presumably more populist House of Representatives. There is no evidence the Constitution's architects envisioned it as a place where legislation goes to die.

And yet that's what it has become.

According to the Brennan Center for Justice at the New York University School of Law, the Senate has passed a record-low 2.8 percent of bills introduced during the current 112th Congress. Judicial nominations have languished on average for more than six months.

That inaction can be tied to the increased use of filibusters—or even the threat of them—a tactic that, operationally, means it takes a supermajority of 60 votes to pass anything.

That's not only anti-democratic—a point made in the Federalist Papers by Alexander Hamilton and James Madison—it also is embarrassing. The Senate has simply stopped making decisions on critical issues. Each parties uses procedural tactics to frustrate the other, and as a result, the work of the American people isn't getting done.

Now some junior Democrats want to vote on changing the Senate's rules when the 113th Congress opens in January, and Majority Leader Harry Reid says they'll get that vote. The suggested changes make sense: No more blocking motions to bring a bill to the floor or convene conference committees. And a requirement that senators who wish to filibuster a bill once again stand and talk for hours on end to block its consideration. We'd add an idea from the nonpartisan No Labels group: a 90-day deadline for confirmation votes.

Republicans who favored similar reforms when Democrats used the rules to frustrate their majority during the Bush years now complain that Reid would destroy the Senate's culture if he rams through changes by a majority vote—and some veteran Democrats, who recall being in the minority, agree. There must be a way for Senate to resolve this impasse in a way that respects minority views, yet allows real work to proceed.

[From the Columbian, Dec. 18, 2012]

Many changes will be required for Congress to overcome its current soul-crushing and will-sapping partisan divide. But even the longest journey begins with a single step, which is why the Senate should enact two quick and easy reforms when the 113th Congress convenes in January.

No, this has nothing to do with the so-called ''fiscal cliff,'' which is a crisis that for now is wholly owned by the House of Representatives. But it is a reminder that there are pressing issues in addition to the nation's financial crisis. Among them is the fact that there is gridlock in the Senate. Yes, the austere, august Senate, originally designed as a refuge of nobility and decorum, is no more noble than the sandbox fight that is the House.

During the past six years, Republicans used the parliamentary procedure known as a filibuster almost 400 times to waylay legislation. That is about twice as often as the

procedure was used during the previous six years, and it included the filibustering of simple procedural motions. All of this suggests the Republicans have been more interested in obstructionism than productivity, and we would hope for a little less paralysis and a lot more action from the next Senate.

To be sure, the filibuster is a necessary and often-productive method for preventing tyranny of the majority. The party that is not in power must have some means to prevent being bulldozed by an overzealous ruling party that wishes to limit debate. But the modern filibuster isn't the filibuster they taught about in your grandfather's high school Civics class.

The traditional filibuster evokes images of a courageous legislator righteously standing up for his or her beliefs, speaking for hours on the Senate floor and resorting to reading the phone book if necessary to prevent a bill from coming to a vote. Yet the modern filibuster consists of little more than a notification that a filibuster is in effect—and that notification can be delivered anonymously. The filibuster then prevents a vote and effectively kills legislation unless a cloture vote can be passed to end the ''debate.'' This essentially means that 60 votes are required to pass any legislation out of the Senate, providing the minority party with more power than voters have willed to them.

That brings us to our proposals:

Restore the rule requiring actual floor debate to sustain a filibuster. Not only would this force senators to act on their convictions rather than their partisan predilections, but in a world of 24/7 media coverage it would allow voters to see exactly who is holding up legislation and to consider why they are doing so. If a senator wishes to read recipes in order to prevent a vote on the Paycheck Fairness Act, so be it. But let the country watch.

Prohibit anonymous filibusters. If a senator wishes to prevent a vote on the Dream Act, fine. But he or she should own it, for the whole world to see. The trick is that any procedural changes governing Senate business can be passed by a simple majority—if the change is made on the first day of a new session. The 113th Congress will convene on Jan. 3, 2013, and we urge the new Senate to show that it is interested in a new way of doing business—one that actually welcomes debate and accountability rather than allowing legislators to silently and anonymously block the people's business.

We should expect nothing less from those we send to Washington.

[From the San Bernardino County Sun, Dec. 7, 2012]

BACK TO THE FUTURE ON FILIBUSTER REFORM

(By the San Jose Mercury News)

The Senate needs to go back to the future on filibuster reform. Senators should have to stand their ground and raise their voices on the Senate floor, around the clock if necessary, a la Jimmy Stewart in ''Mr. Smith Goes to Washington,'' to keep legislation from coming to a vote.

Back in the day, a minority senator had to have strong personal convictions against legislation to undertake the onerous, sleep-depriving filibuster, talking and talking and talking to block action. Today, a senator, or a group of senators, can merely threaten a filibuster, and suddenly the legislation requires a 60-vote supermajority to move forward to a vote. It's outrageous. Senate Majority Leader Harry Reid wants to change the rules, and President Obama should be helping to persuade the handful of Democratic senators who are on the fence.

California Sen. Dianne Feinstein is one of them. She told the publication The Hill that she thinks it would be a mistake to use the Senate's power to change the filibuster rules, but she said, ''I'll listen to arguments.''

Senate Republicans' record should be argument enough. And if the parties' control of the Senate were reversed, that would be just as wrong.

Not one filibuster was recorded in the Senate until 1841. The average in the decade of the Reagan and Carter years was about 20 per year. Senate Republicans used the filibuster a record 112 times in 2012 and have used it 360 times since 2007.

They have stopped legislation that has widespread public support. GOP senators blocked a major military spending bill, a badly needed veterans' jobs bill and the Dream Act, all of which would have passed with a majority. They stifled the Disclose Act, which would require greater transparency in campaign advertising. In a particularly craven abuse of the system, they have halted the nominations of nearly two dozen judicial appointments, causing backlogs in courts that delay justice for people and businesses across the country.

Some Democrats fear that Republicans will win control of the body in 2014, when 20 Senate Democrats will have to defend their seats, and they'll want the power minority Republicans have now. But then Republicans could change the rules.

In ''Mr. Smith,'' an idealistic Jimmy Stewart used the filibuster in an admirable way. But it has an ugly history, often as a last-ditch attempt to stop overdue change. In 1957, Sen. Strom Thurmond spoke for a record 24 hours and 18 minutes against the Civil Rights Act, which he labeled unconstitutional and ''cruel and unusual punishment.''

The Senate is supposed to debate the great issues of the day, not stop them from being debated. Senators should change the rules and get back to work.

[From the Contra Costa Times, Dec. 3, 2012]

FILIBUSTER RULES MUST CHANGE AND LAWMAKERS NEED TO GET BACK TO WORK

(Contra Costa Times editorial)

The Senate needs to go back to the future on filibuster reform. Senators should have to stand their ground and raise their voices on the Senate floor, around the clock if necessary, a la Jimmy Stewart in ''Mr. Smith Goes to Washington,'' to keep legislation from coming to a vote.

Back in the day, a minority senator had to have strong personal convictions against legislation to undertake the onerous, sleep-depriving filibuster, talking and talking and talking to block action. Today, a senator, or a group of senators, can merely threaten a filibuster, and suddenly the legislation requires a 60–vote supermajority to move forward to a vote. It's outrageous. Senate Majority Leader Harry Reid wants to change the rules, and President Obama should be helping to persuade the handful of Democratic senators who are on the fence.

California Sen. Dianne Feinstein is one of them. She told the publication The Hill that she thinks it would be a mistake to use the Senate's power to change the filibuster rules, but she said, ''I'll listen to arguments.''

Senate Republicans'' record should be argument enough. And if the parties' control of the Senate were reversed, that would be just as wrong.

Not one filibuster was recorded in the Senate until 1841. The average in the decade of the Reagan and Carter years was about 20 per year. Senate Republicans used the filibuster a record 112 times in 2012, and have used it 360 times since 2007.

They have stopped legislation that has widespread public support. GOP senators blocked a major military spending bill, a badly needed veterans' jobs bill and the Dream Act, all of which would have passed with a majority. They stifled the Disclose Act, which would require greater transparency in campaign advertising. In a particularly craven abuse of the system, they have halted the nominations of nearly two dozen judicial appointments, causing backlogs in courts that delay justice for people and businesses across the country.

Some Democrats fear that Republicans will win control of the body in 2014, when 20 Senate Democrats will have to defend their seats, and they'll want the power minority Republicans have now. But then Republicans could change the rules.

In ''Mr. Smith,'' an idealistic Jimmy Stewart used the filibuster in an admirable way. But it has an ugly history, often as a last-ditch attempt to stop overdue change. In 1957, Sen. Strom Thurmond spoke for a record 24 hours and 18 minutes against the Civil Rights Act, which he labeled unconstitutional and ''cruel and unusual punishment.''

The Senate is supposed to debate the great issues of the day, not stop them from being debated. Senators should change the rules and get back to work.

Mr. HARKIN. At issue in this debate is a principle at the heart of our representative democracy. This is from Alexander Hamilton in Federalist Paper No. 22:

> The fundamental maxim of republican government . . . requires that the sense of the majority should prevail.

The Framers, to be sure, put in place important checks to temper pure majority rule. For example, the Bill of Rights protects fundamental rights and liberties. Moreover, the Framers imposed structural requirements. For example, to become a law, a bill must pass both Houses of Congress and then it is subject to the President's veto power, and then, of course, there are always the courts and the Supreme Court to rule on the constitutionality of legislation.

The Senate itself was a check on pure majority rule. As James Madison said:

> The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch.

Meaning the House of Representatives.

To achieve this purpose, citizens from the smallest States have the same number of Senators as citizens from the largest States, which I commented on earlier. Further, Senators are elected every 6 years, not every 2 years. These provisions in the Constitution are ample to protect minority rights and to restrain pure majority rule.

What is not necessary and what was never intended is an extraconstitutional empowerment of the minority through a de facto requirement that a supermajority of Senators be needed to even consider a bill or nominee, let alone to enact a measure or confirm an individual for office.

As I said earlier, the Constitution was expressly framed and ratified to correct the glaring defects of the Articles of Confederation. The Articles of

Confederation required a two-thirds supermajority to pass any law and a unanimous consent of all States to ratify any amendment. Well, we know that the experience under the Articles of Confederation was a dismal failure, one that crippled the national government. The Framers were determined to remedy those defects under our new Constitution.

It is not surprising that the Founders specifically rejected the idea that more than a majority would be needed for most decisions. In fact, the Framers were crystal clear about when a supermajority is needed—five times. It is spelled out clearly in the Constitution: ratification of a treaty, the override of a veto, votes of impeachment, passage of a constitutional amendment, and the expulsion of a Member. It is expressly pointed out in the Constitution.

It should be clear, especially to those who worship at the shrine of ''original intent,'' that if the Framers wanted a supermajority for moving legislation or confirming a nominee, they would have done so. They would have written it in there. Not only did they not do so, until 1806 the Senate had a rule that allowed for a motion for the previous question. That goes back to the British Parliament. It permitted a majority to stop debate and bring up an immediate vote.

It was Vice President Aaron Burr, as he was leaving the Senate and they were reforming the rules, who said: You know, this is never used. We might as well do away with it because it is never used, anyway. So they did away with the motion for the previous question, but the point being that the first Congress in the first Senate enacted that. They had that motion for the previous question. The Founders were very clear why a supermajority requirement was not included. As Hamilton explained, a supermajority requirement would mean that a small minority could ''destroy the energy of government.''

That is what Madison said. A supermajority would mean that a small minority could ''destroy the energy of government.'' Government would, in Hamilton's words, be subject to the ''pleasure, caprice or artifices of an insignificant, turbulent or corrupt junta.''

James Madison, as I said, said this:

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

Federalist Paper No. 58. When James Madison—sort of the author of our Constitution—said, no, you cannot have a supermajority; if you do that, then the minority would rule, the power would be transferred to the minority—unfortunately, Madison's warning has come true. In the Senate today—the United States Senate—the minority, not the majority, controls. In today's Senate, American democracy is turned on its head. The minority rules, the majority is blocked. The majority has responsibility and accountability, but the majority lacks the power to govern. The minority has the power but lacks accountability and responsibility. This means the minority can block bills and prevent confirmation of officials and then turn around and blame the majority for not solving the Nation's problems. The minority can block popular legislation and then accuse the majority of being ineffective.

I firmly believe we need to restore the tradition of majority rule to the Senate. Elections, I believe, should have consequences. That is why I developed my plan, as I said, almost 20 years ago to amend the standing rules to permit a decreasing majority of Senators over a period of days to invoke cloture on a given matter. I believe it is clear in the history of the Senate and of the Framers of the Constitution.

There is the story, of course, that has been told many times. It may be a popular story, I don't know. Thomas Jefferson, of course, was not here for the drafting of the Constitution. He was in France. He came back home and looked at the Constitution. He was having breakfast with George Washington. As the story goes, Jefferson was upset about the Senate. He looked upon it as another House of Lords. So he asked Washington why he allowed such a thing to happen, that the Senate would be created. Washington supposedly said to him: Why did you pour your tea into the saucer? Jefferson said: To cool it down. Washington purportedly said: Just so. That is why we created the Senate, to cool things down, to slow down legislation, apart from that popular body over there, so there could be a more sober second look at things. What Washington did not say, as far as I know, was that the Senate was created to be a trash can where legislation could be killed and stopped. The idea was to slow things down, to deliberate.

Senator George Hoar noted in 1897 the Framers designed the Senate to be a deliberative forum in which a ''sober second thought of the people might find expression.'' That is what the Senate is supposed to be about. But at the end of ample debate and with the right of the minority to be able to offer amendments and have them voted on, the majority should be allowed to act with an up-or-down vote on legislation or on a nominee. In this way, we could restore this body to one where government can actually function and where we can actually legislate.

I think this plan also has another advantage. Recently, the minority leader defended the abuse of the filibuster on the grounds that it forces the majority to compromise and to ''resolve the great issues of the moment in the middle.'' I strongly disagree with the minority leader. Right now, the fact is, because of the abuse of the filibuster, the minority has no incentive to compromise. Why should they? They can stop it. They have the power to block legislation without even coming to the floor to explain themselves. In such a world, as we have seen over the past few years, why would the minority come to the table to cut a deal? I showed my colleagues the list of all the legislation they have blocked the last couple years. There wasn't any overture from the minority to compromise. They just said: We are going to kill it; the majority is not going to be able to bring it up.

The DREAM Act, for example. What are those other bills on the chart? The DREAM Act, and the other ones listed we wanted to bring up. Here is the list again. The DREAM Act. Did the Republicans say we want to compromise? No, they just killed it. The Bring Jobs Home Act, just kill it. The Paycheck Fairness Act, just kill it. Creating American Jobs and Ending Offshoring Act, just kill it. There was no real attempt to compromise because they didn't have to compromise.

In contrast, under my proposal, where we would have 60 votes at the beginning and if we didn't have 60 votes, we would file another cloture motion and wait 3 days, then we would have another vote. Then we would need 57 votes. Then, if we didn't get 57, we could file another cloture motion and then we would wait 3 days and need 54 votes. If we didn't get that, we would wait 3 more days, file another cloture motion and only need 51 votes.

This would be a period of about 16 days, plus 30 hours of debate, that would be allowed under my proposal. Here is why that would be a true compromise. The minority wants the right to offer amendments to be heard on a bill. I understand that. They should have that right. The most important thing to the majority leader—whether Republican or Democrat, whoever the majority leader may be—the most important thing for the majority leader is time on the floor. So someone files a bill, it is filibustered by the minority, they have a cloture vote, and let's say there are only 53 votes for it. The minority knows that at some point, this bill is going to come to the floor. We will get a vote on it. The majority leader knows that will happen, but it is going to chew up a couple weeks' time. The most important thing to the majority leader is time, so the majority leader would like to collapse that time. The minority leader would like to have the right to offer amendments, and therein is the compromise. The minority leader comes and says: If we can offer these amendments, we will collapse the time; if not, we will chew up a couple weeks' time. That provokes compromise. But when one side knows that with 41 votes they can absolutely trash can something, why should they compromise if they have the 41 votes?

Again, I wish to emphasize another fact about my proposal. The Republicans have said the filibuster is necessary because Democrats increasingly employ procedural maneuvers to deprive them of their right to offer amendments. I want my colleagues to

know I am sympathetic to that argument. That is why in the last Congress I included in my resolution the guaranteed right to offer germane amendments; the inherent right of the minority to offer those amendments.

Unfortunately, of course, every Republican voted against my proposal, and that is because Republicans currently want the best of both worlds: the right to offer nongermane amendments and the right to obstruct, and that doesn't make sense.

Again, no one should be fooled. The fact is the radicals who now hold sway in the Republican Party are not concerned with making the government or the Senate function better. That is because the current use of the filibuster has nothing to do with ensuring minority rights to debate and deliberate or the right to amend; otherwise, they could support either one of these proposals, either mine or Senator MERKLEY's or Senator UDALL's. Nor have I ever heard one Republican come to the floor and unequivocally state that if the majority leader stopped filling the amendment tree, they would routinely vote for cloture, even if they opposed the underlying bill. I have not heard one of them say that because the current use of the filibuster has nothing to do with minority rights. It has everything to do with obstruction, hijacking democracy, and a pure power grab designed to nullify elections in which the public has rejected the minority's ideas and placed them in the minority so the majority could act.

The minority leader, I must say, has been frank about this approach to governing. In a speech about the balanced budget amendment, he said the following. Listen to this. This is our minority leader:

> The time has come for a balanced budget amendment that forces Washington to balance its books. The Constitution must be amended to keep the government in check. We have tried persuasion. We have tried negotiations. We have tried elections. Nothing has worked.

Think about that. In other words, when elections—when democracy doesn't work, what does the minority leader want? The ability to undermine the majority from acting in the Senate. Imagine that. We have tried elections and the elections didn't go their way. They have tried elections. So if they can't do that, then they have to do something else. It seems to me the ballot box ought to be determinative of what kind of government we have.

Republicans have repeatedly filibustered motions to proceed. How can they offer amendments if we can't even bring it up? They filibuster judicial nominees. Of course, nominations can't be amended; again, belying the argument that many Republicans use because of filling the tree. There is no tree when it comes to nominations.

I want to now emphasize something. I have been saying all along the Republicans and how they have been using the filibuster. I want to say unequivocally the Democrats don't come to this with clean hands, I can tell my colleagues. It has been both sides. It depends on who is in the majority and who is in the minority. That is all it depends on. As I said earlier when I first brought this up in the 1990s, I warned then of an escalating arms race. I have been in the Senate long enough to have five different changes in the Senate between majority and minority, and every single time the number of filibusters goes up—every time. Democrats say to Republicans: You filibustered 30 times last Congress. We are now in power; we will filibuster you 60 times. The Democrats get kicked out and the Republicans come back and they say: They did it 60 times and we will do it 100 times, on and on and on.

It is akin to an arms race. So any time I use the word ''Republican'' generically, we can just substitute minority. I don't care what minority, Democrats or Republicans. It doesn't make any difference. The minority in the Senate should not have the absolute power to trash can something. It should have the power to slow things down, to debate, to amend, to deliberate, but eventually the majority—the people whom the people at the ballot box in this country have put in charge to govern—should at some point be allowed to govern. If I am in the minority, all I want is the right to be able to debate, have my views heard, offer amendments.

I might also say this: The right of the minority is not to win. The minority doesn't have the right to win, but it sure has the right to offer amendments and to be heard and to be able to try to sway people. I have been in the Senate when we have had amendments and, amazingly enough, we get some Republicans and some Democrats and it passes, even though some Democrats and some Republicans oppose it. That very rarely happens any longer.

Again, I have been talking mostly about Republicans generically, and that is because they are in the minority now. I said the same thing about Democrats when the Democrats were in the minority. This is not a minority right. It is nothing less than a form of tyranny by the minority. Who said that? That was Senator Frist, the Republican leader, again, in November of 2004, when he was in the majority and we were in the minority: ''This filibuster is nothing less than a formula for tyranny by the minority.'' He was right. It just depends on who is in the minority and who is in the majority.

That is why we have to make a change. It could be Democrats, it could be Republicans, it could be—even a bipartisan coalition, if it is a minority, a small minority.

As I said, I don't think there is anything radical about what I have introduced. As I noted, the filibuster was not in the Constitution. It was rejected by the Founders. There is nothing sacred about requiring 60 votes to end debate. The Senate has adopted rules and laws that prevent the filibuster in numerous circumstances. Get that. This Senate has adopted rules that forbid the filibuster in certain cases. The budget cannot be filibustered, war powers cannot be filibustered, international trade acts—imagine that. International trade acts cannot be filibustered. Congressional Review Act, disapproval of regulations, cannot be filibustered. So if the filibuster is so sacred, why have we carved out exceptions for international trade acts?

Moreover, article I, section 5, clause 2 of the Constitution, the rules of proceedings clause, specifies: ''Each House may determine the rules of its proceedings.'' Again, my resolution, far from being unprecedented, stands squarely within the tradition of updating Senate rules as appropriate to fostering more effective and functioning legislation. For example, beginning in 1917, the Senate passed four significant amendments to its standing rules, the latest in 1975, to narrow, to shape the filibuster. In 1979, Senator Robert Byrd made clear that the Constitution allows a majority of the Senate to change its rules. He said:

> [t]he Constitution, in Article I, section 5, specifies that each House may determine the rules of its proceedings. Now we are at the beginning of a Congress.

Senator Byrd said:

> This Congress is not obliged to be bound by the dead hand of the past . . . It is my belief—which has been supported by rulings of Vice Presidents of both parties and by votes of the Senate in essence upholding the power and right of a majority of the Senate to change the rules of the Senate at the beginning of a new Congress.

Senator Byrd: ''This Congress is not obliged to be bound by the dead hand of the past.'' He said that. '' . . . power and right of a majority of the Senate to change the rules of the Senate at the beginning of a new Congress.''

Again, this was also the opinion of the Republican Party. As I mentioned, in 2005 the Republican policy committee, chaired by our former colleague Senator Kyl, stated:

> The Senate has always had, and repeatedly has exercised, the constitutional power to change the Senate's procedures through a majority vote.

That is a statement from the Republican policy committee in 2005.

Those who say this is some kind of nuclear option, blow up the Senate, all these terms about nuclear options—no, it is not a nuclear option. As Senator Byrd said and as Senator Kyl said, ''The Senate has always had, and repeatedly has exercised, the constitutional power to change the Senate's procedures through a majority vote.''

There are those now—I must admit, some in my own party on this side of the aisle in the Senate—who say that in order to change the rules, we have to have a two-thirds vote. Now, why is that? Well, because some Senate in the past set down the rules. They said that in order to change these rules, you need a two-thirds vote. Are we bound

by that dead hand of the past? Not at all. Not at all. Each new Congress—each time the Senate convenes after a new Congress forms—can by majority vote change its own rules. It is not a nuclear option at all.

To be very clear, I opposed the Frist motion at that time in 2005, and I made it clear why—because they were attempting to change the rules in the middle of a Congress.

While I believe the Congress has the power—I'm sorry, it was the Republican policy committee. It is at the beginning of a Congress.

Senator Byrd said:

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

I mean, you can't go changing rules every other week. How do you know what is going to happen? But at the beginning of a Congress every 2 years, the Senate has the right by a majority vote to set down the rules, and you operate by those rules for 2 years. What Senator Frist was trying to do was change it in the middle of the game. Well, if you go down that pathway, my goodness, the majority could change the rules next week and the week after, do it one time one week and one time the next. How would you ever know what the rules of the road were? The only reason I opposed the Frist motion at that time was because it was changing it in the middle of a Congress.

Here is a letter from numerous constitutional scholars, including Charles Fried, Solicitor General under President Reagan, and Michael McConnell, a former Federal judge nominated by President George W. Bush. These scholars make clear that at the beginning of a new Congress, a majority of the Senate can change its rules. Here is the letter, and it reads in part:

> Some, however, have sought to elevate the debate to constitutional dimensions by suggesting that it is institutionally improper for a new Senate to alter the Senate's rules by majority vote because the internal procedures adopted by prior Senates have required a two-third majority to allow a vote on a motion to alter the rules.
>
> With respect, such a concern confuses the power to change the Senate rules during a session with the unquestioned constitutional power of each incoming Senate to fix its own rules unencumbered by the decisions of past Senates. The standing two-thirds requirement for altering the Senate's rules is a sensible effort at preventing changes to the rules in the midst of a game. It cannot, however, prevent the Senate, at the beginning of a new game, from adopting rules deemed necessary to permit the just, efficient and orderly operations of the 113th Senate. . . .

This letter from Charles Fried, Solicitor General under President Reagan, and Michael McConnell, a former Federal judge nominated by President George W. Bush, states:

> We agree with the overwhelming consensus of the academic community that no preexisting internal procedural rule can limit the constitutional authority of each new Senate to determine by majority vote its own rules of procedure.

> We agree with the overwhelming consensus of the academic community that no preexisting internal procedural rule can limit the constitutional authority of each new Senate to determine by majority vote its own rules of procedure.

That is very profound. So it is not just me as a Democrat. Here are two Republicans, very prominent Republicans, saying the same thing.

The last significant rules change, I might point out, was in 1975, when the number of votes necessary for cloture was set at 60. There is only one Senator today—Senator LEAHY—who was in the Senate in 1975 to vote on that current version of rule XXII. No one else was here then. We have had how many different Senates since that time, and yet that dead hand of the past continues to rule.

Mr. President, I would like to emphasize that I firmly agree that amending the standing rules is necessary. Informal agreements are insufficient to return the Senate to functionality. We had this last time—sort of a handshake agreement to make the Senate a better institution through fewer filibusters, procedural delays, et cetera. Looking back over the last 2 years, I don't think anyone would agree that this gentleman's agreement was very effective.

The minority leader recently stated that the reforms being advocated by me and others are being done with the ''purpose of consolidating power and further marginalizing the minority voice.'' Nothing—nothing—could be further from the truth. I want to be 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. Those of us who went to law school all remember that if you come into the court of equity, you have to come in with clean hands. I hope that I have clean hands since I first offered this when I was in the minority. I was in the minority.

Again, I would point out that it belies belief that sometime in the future, Democrats won't be in the minority again. It is going to happen, and it should. No one party should rule here for long periods of time. We need to have that kind of change. But what we need is the ability of whoever is in the majority to be able to govern. That is what the people elected them to do.

Well, the truth is that we do not function here. We do not function in the way we are supposed to under the Constitution—something both Democrats and Republicans should care about. What was never envisioned and what should not be allowed to continue is a system where bills are prevented from being debated or the idea that a small minority can block legislation or nominees without even coming to the floor to explain themselves.

Finally, there is one other red herring that keeps coming up, and that is that somehow the reform I am proposing or any reform will somehow make the Senate like the House. I have heard that from Members from the other side of the aisle—oh, we will just become like the House of Representatives.

I have to ask the question, since when did the Senate become defined by rule XXII, the cloture rule? Why does that define the Senate? It seems to me the Senate was designed in the Constitution where we have two Senators from every State, small and large; where we are reelected every 6 years, not every 2; where the Senate has certain functions on treaties and on nominations that the House of Representatives doesn't have; and where the Constitution is very clear; there are five times where the Senate must have a supermajority to act.

Again, I would point out that the Senate will, by its very nature—even under my proposed reform or even that of Mr. UDALL or Mr. MERKLEY—still operate based on unanimous consent, and each Senator will continue to understand that maintaining good relationships with all Senators, working hard to become experts in issues, and drafting legislation and amendments will remain the essence of what it means to be a Senator, not the ability to filibuster.

To those who say we have become more like the House, I say that is not going to happen. Well, it could. Sure it could. Some future Senate could wipe out all the rules—wipe out all the rules. Now, they couldn't do away with the constitutional aspect. They couldn't make us elected every 2 years, for example, but take away the function of the Senate in terms of treaties, impeachments, and things like that, sure. Any future Congress can change the rules.

I think that because of the nature of the Senate, the way it is established, because of the way it is set in the Constitution—two from every State, not popularly elected every 2 years—that means Senators will have to work with one another. They will have to exhibit that kind of comity—c-o-m-i-t-y, not comedy—of recognizing that each Senator should have the right to amend, to debate, to discuss the question, to offer amendments.

Again, we were told that somehow the filibuster—this idea that the filibuster somehow defines the Senate, again, until 1970 there was approximately one filibuster per Congress. Did anyone ever suggest then that because there was not the rapid use of a filibuster, the Senate was no different from the House? Was the Senate of Clay, Wagner, Vandenberg, Johnson, and Taft just another House of Representatives? Were the giants in the Senate who came before us—the Daniel Websters, the Henry Clays, the Robert Tafts, the Hubert Humphreys—were they any less a Senator because they were not defined by a de facto 60-vote supermajority requirement?

I believe the Senate should embrace George Washington's vision of this body, if that story is true about him and Jefferson and the saucer and the tea. The Senate was set up to slow things down to ensure proper debate and deliberation. That is what the Founders intended. That is what we have advocated and I advocate. We will not become the House. As one author has noted, however, the increasing use of the filibuster has converted the Senate from the saucer George Washington intended into a deep freeze and a dead weight.

At the heart of this debate is a central question: Do we believe in democracy?

Republicans and, sadly, many of my colleagues in my own caucus repeatedly warn about advancing these reforms because Democrats will find themselves in the minority one day and we may want to stop something. Well, I am sorry, I don't fear democracy. If the people of this country at the ballot box put the Republicans in charge of the Senate, the Republicans ought to have the right to govern. We should have the right to be able to offer amendments and debate and deliberate, but we should not have the right to absolutely obstruct what the majority is doing. Issues of public policy should be decided at the ballot box, not by the manipulation of archaic procedural rules.

The truth is that neither party should be afraid of majority rule, afraid of allowing a majority of the people's representatives to work its will. After ample protections for minority rights, the majority in the Senate, whether Democratic, Republican, or a bipartisan coalition, duly elected by the American people, should be allowed to carry out its agenda, to govern, and to be held accountable at the ballot box.

I wish to conclude by noting that it is often said—and it is true—that the power of a Senator comes not by what we can do but by what we can stop. That is true. The Senate is a body in which one individual Senator has an enormous amount of power to stop things. No one wants to give up that power. But I believe it is time for us Senators to take a look at ourselves. For the good of the Senate and, more importantly, for the good of the country, we need to give up that power—not all of it but a little bit of it. I am willing to give it up.

All Senators should have fundamental confidence in democracy and the good sense of the American people. We must have confidence in our ability to make our case to the people and to prevail at the ballot box. We must not be afraid of democracy. I am not afraid of it. I, quite frankly, believe my ideas, my support of certain measures, is more widely supported by the American people than my friends on the other side of the aisle. They believe just the opposite. That is good. That is the way we should operate here in grinding out legislation and then at the ballot box every 2 years.

Healthy debate is about the direction of the country and which way we should go. We should have the confidence—the Republicans should have their own confidence and we should have our own confidence—in our ability to make our case to the people and to prevail at the ballot box. I say: Don't be afraid. Don't be afraid of the American people and their inherent ability to make wise and just decisions. Things may go awry one time or another time, but in the great history of our country, the American people—as Winston Churchill once said: After we try everything else, we always do the right thing—the American people make the right decisions. Sometimes I may not agree with it, but then it is my business to go out and try to convince my constituents and others they made the wrong choice; that we should be going in a different direction.

That is the essence of democracy, not the power of me, a Senator from Iowa, being able to stop what the majority wants to do; not me, just with a handful of other people saying: I don't care what they want to do; we can stop it, put it in the trash can.

All I want is the right to debate, to discuss, to be able to offer amendments that are germane to the legislation. So, again, I am not afraid of living with these reforms, both as a member of the majority party and as a member of the minority party, which I am sure we will once again become at some point in the future.

So, Mr. President, as I have over the last, I guess it makes 17 years now, I come to the floor knowing that my proposal will not win. Well, it hasn't thus far. And that is all right. A lot of times people say: Why do you offer it? You know you are going to lose.

I offer it because I believe so deeply in this, and I believe sometimes you just have to stand for what you believe in, and you have to make your case as forcefully, as intelligently as possible. I hope I have done that both in my words and in my statement and in the past debates I have had on this Senate floor that occur about every 2 years when the Senate convenes.

I don't carry this beyond the first day of legislative business. I don't think we should. If we set the rules down on the first day, after that I don't think we should be changing the rules in the middle of the game. But we are still in the first legislative day, and I think now is the time to do this.

Mr. President, before I yield the floor, I know our distinguished minority and majority leaders have been working hard on some reforms on the filibuster. I am not privy to all of that. I don't know exactly all the details of it, although it was discussed in our policy caucus today. But I will say this about it—at least what I understand to be the essence of the reforms that our majority leader has worked so hard on—it is better than what we have right now. From what I understand—and I don't know all the details—it is a step in the right direction.

I want to make it clear that I might vote for it—as soon as I find out exactly what it all is. I might vote for it because it is probably better than what we have right now. But I just want to be clear that my vote for that does not signify that I prefer that over doing away with this absolute 60-vote threshold because under the reformed rules that I understand are being promulgated by the majority and minority leaders, we still have a 60-vote threshold on anything except for the motion to proceed.

So on any amendment, any bill, we still have 60 votes. So a small group, a handful, can still put bills and amendments and everything else in the trash can. I just fundamentally disagree with that. So if I do vote for that—like I say, I probably will—it is because it looks like it might be better than what we have now.

I know it is tough. I do not denigrate for one minute the effort and the work of the majority leader and the minority leader in trying to reach these agreements. These are tough things. I just think we have to be more forthright in constantly—every 2 years—going after this idea that somehow this dead hand of the past that says we need a two-thirds vote to change the rules and that somehow that controls us—it shouldn't; it doesn't control us—that somehow we have to adhere to this 60-vote threshold forever. That shouldn't control us.

Every 2 years, according to the Constitution, according to Senator Byrd, according to constitutional scholars of both parties, we have the constitutional right at the beginning of a Congress to change our rules with a majority vote. That is what we ought to be about doing.

So, Mr. President, I look forward to seeing the proposed rules reform the majority leader and minority leader have been working on. Again, I know it is tough to work these things out, but I think this body has to move ahead and do away with that dead hand of the past and provide for rules changes that allow us to function, that allow the majority to act, with the right of the minority to debate, to slow things down and to amend—but not the right to win. I have never said the minority has to have the right to win. But the minority ought to have the right to make their voices and their votes heard in this body.

That is what my proposal would do. Again, as I said, I don't expect it to win, but I want people to be able to express themselves if they believe we should move in that direction, and I offer it in that vein. I know there are those who believe somehow that we have to abide by that two-thirds vote, by this dead hand of the past. I just don't believe so.

Mr. President, with that, I yield the floor.

The PRESIDING OFFICER (Mr. KING). The Senator from Maryland.

EXTENSION OF MORNING BUSINESS

Mr. CARDIN. Mr. President, I ask unanimous consent that the period of morning business be extended until 6:30 p.m. today, and that all provisions of the previous order remain in effect.

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

Mr. CARDIN. Mr. President, first, let me compliment Senator HARKIN for his incredible leadership in bringing to the attention of this body something I think everyone understands; that is, with the procedures of the Senate and the way it is operating today, there is a problem. There is a very serious problem.

All one needs to do is to turn on C–SPAN to see the Senate in a quorum call for hours to know there is a better way for us to operate. All one has to do is to look at a week that goes by where there are very few recorded votes to know there is opportunity for debate and action that is being lost in the Senate. We can do better. The procedures we are following today, the way that is being honored by the Members of the Senate, we need to change the rules and procedures of the Senate.

I want to thank the majority leader and the Republican leader for negotiating and getting together to understand the frustrations that are out there in both of our caucuses and to try to come up with reasonable changes in our rules. I see Senator MCCAIN is on the floor, and I acknowledge his leadership, along with that of Senator LEVIN. I was honored to work with that group, along with Senators PRYOR, SCHUMER, BARRASSO, ALEXANDER, and our former colleague, Senator Kyl. We sat for hours debating, and it was very educational for me, Mr. President, because I listened to the concerns of my Republican colleagues—and it was a lot different than what I heard in the Democratic caucus—and I think we both learned a lot from each other.

But there was general agreement that there is a real problem in the operation of the Senate, and we have an obligation to take a look at our rules and see whether we can't modify the rules so we can have the type of deliberation, debate, and voting that is expected of the Senate.

One of the problems that became very apparent to all of us is that individual Senators are able to block the consideration of amendments and bills on the floor of the Senate indefinitely. That is wrong. My colleague from Arizona pointed out that someone could be in their home State and offer an objection, and a bill could be brought to a standstill. That is not how the Senate should operate. We should be able to consider legislation, and individual Senators should not be able to block the consideration of that legislation.

I could give examples of hundreds of bills that have been reported out of our committees in the Senate that have never reached the floor of the Senate. Quite frankly, the reason is an individual Senator blocked consideration, and it would take the majority leader too much time to go through cloture motions in order to bring those issues to the floor of the Senate.

We also have seen an abuse of the 60-vote threshold. The 60-vote threshold shouldn't be the standard working procedure of the Senate. A simple majority should control our actions. Yet in too many cases we have used the 60-vote threshold in order to move legislation forward.

We have also seen that it is very difficult to bring amendments up for consideration. It has been very difficult to get action on individual amendments on the floor of the Senate. So we need to change our procedures. We need to be the great deliberative body which historically the Senate has been.

I want to compliment many of my colleagues—I already mentioned the group that worked on some suggested rules changes and made those recommendations to the majority leader and the Republican leader—but I also want to thank my colleague, Senator HARKIN, who just spoke, for his leadership on this issue, as well as Senators MERKLEY and TOM UDALL, who have been leaders on this matter. We have brought this to the attention not only of our colleagues but to the attention of the American people, and they expect us to take action to improve the operation of the Senate.

Let me talk a moment about the negotiated agreement between the Democratic leader and the Republican leader—between the majority and minority leaders—and what I understand will be recommended to us very shortly, and I hope we can act on it as early as this evening.

First, one of the frustrations is that we find it difficult to bring a bill to the floor of the Senate in a motion to proceed. The threat of a filibuster on the motion to proceed has denied us the opportunity to even start debating an issue. Under the agreement I expect will be brought forward, the majority leader will have two additional opportunities to start debate on an issue.

First, if the Republican leader is in agreement, they can bring that bill to the floor immediately, without any preconditions. That could particularly work well on institutional issues that need to be dealt with, such as appropriations bills, so that we can get onto appropriations bills a lot sooner than we can today.

There is then another opportunity where the majority leader could bring a bill to the floor without the fear of a filibuster, without having to file cloture, by offering amendments. There would be a guaranteed right to offer up to four amendments: two by the minority, two by the majority. That gets us started on legislation.

Now, it is very interesting, if one looks at the process that has been used where bills come to the floor and where we are most pleased by how the process has worked—such as in the case of the national defense authorization bill, postal reform, and the Agriculture bill in the 112th Congress—in each of those cases the committees voted on the bills, they came to the floor with the managers, we started on the bills, and we completed the bills. I think we were all pretty proud with the manner in which those issues were handled on the floor of the Senate.

Under this process, the majority leader could get us started. The managers can get us started on legislation. Once we start on legislation, once we start debating the issues, we can see what amendments are out there, and we can try to manage the time appropriately and actually get action and debate and votes on the floor of the Senate on the amendments and on final passage.

I do think this empowers our committees. We all spend a lot of time in our committees. We are there for the hearings, we want to see committee markups, but we also like to see the products we bring up in the committee be the major work on the floor of the Senate. Well, now, with this reform and the ability of the leader to bring forward a bill that has come out of our committees, our committee products will be more respected, and we will have a better legislative process because we are using the products that come out of our committee. We are respecting the work of our committees. We are rewarding our chairmen and ranking members working together and bringing legislation to the floor of the Senate.

I think that is a real major improvement and something that will allow the Senate to operate in the way it should.

We also allow for conference committees to be formed in a more expedited way. Right now it could take three cloture votes to get into conference. We contract that into one. I think that is going to be the recommendation.

I had the honor in the 112th Congress to serve on a conference committee that dealt with the payroll tax extension. We got our work done, brought a bill to the floor of the Senate and the House, and got it enacted into law because we were able, in a very open and transparent way, to work with our colleagues in the other body, resolve our differences, and bring legislation forward. I might be wrong, but I think that was the only conference committee that operated in the 112th Congress. There haven't been many. I think most Members of this body would be hard-pressed to remember when they last served on a conference committee. Yet we know there are significant differences between the products that come out of this body and the products that come out of the other body. We need to reconcile those differences. Being able to go into conference allows us the opportunity to let