

I am proud of the budget we passed. I think it is a very good budget, but I realize if we go to conference we may have to change some of the things we have in our budget. But we are never going to get this done unless we sit down and work this out, as we have done for more than two centuries here in conferences between the House and the Senate.

STUDENT LOAN INTEREST RATES

Mr. REID. Finally, I see on the floor my friend, the senior Senator from Tennessee, who has been a longtime Governor of his State. He has been the Secretary of Education. We have an issue coming up soon. If we do not work something out in this body before the end of this month, student loan interest rates will go up a lot. If we do nothing, they will double from 3.4 percent to 6.8 percent. If we do what the House wants to do, if we do what Senate Republicans want to do, these student loans will be used to reduce the debt. I do not think that is what we should be doing with students. While this is not the time to debate this issue, everyone should be aware as we deal with immigration over the next couple weeks, we also have to keep this matter on the radar screen that we are going to have to do something about.

I have a number of meetings on this today, and I am sure my Republican colleagues have meetings throughout the day, and we need to have as many as we can to work something out to get this done.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. COWAN). The Republican leader is recognized.

SENATE RULES

Mr. MCCONNELL. Mr. President, day after day I have been coming to the Senate floor to remind the majority leader of the commitments he made to the American people in 2011 and again just a few months ago that he would not break the rules of the Senate in order to change the rules of the Senate; that he would preserve the rights of the minority in this body; that he would not try to remake the Senate in the image of the House, something that could change our democracy in a very fundamental way.

So the question remains: Will he keep his word?

Here is what he said on January 27, 2011:

I will oppose any effort in this Congress or the next—

The one we are in now—

to change the Senate's rules other than through the regular order.

And here is what he said this year, after I asked him to confirm that the Senate would not consider any rules

changes that did not go through the regular order process:

That is correct. Any other resolutions related to Senate procedure would be subject to a regular order process including consideration by the Rules Committee.

Now, look, Mr. President, a Senator's word—especially the word of the majority leader—is the currency of the realm in this Chamber—the currency of the realm in this Chamber. As the majority leader himself said:

Your word is your bond . . . if you tell [a Republican Senator or a Democratic Senator] you are going to do something, that is the way it is.

He is entirely correct. Senators keeping their word, well, that is just vital to a well-functioning Senate. But it is only part of the equation. We also need well-established rules that are clear, fair, and preserve the rights of all Senators—including those in the minority—to represent the views of their States and of their constituents. That is the other reason why I have been pressing the majority leader on this issue.

As a matter of principle, holding a Senator to his or her word is important, but so is preserving a Senate that works the way it is supposed to. And we cannot be assured of that until the majority leader affirmatively states that he will stay true to the commitments he has made.

I understand my friend the majority leader is under a lot of pressure. I have known him for a long time, and deep down I know he understands the far-reaching consequences of "going nuclear." I think he actually realizes how terrible an idea that would be because once the Senate definitively breaks the rules to change the rules, the pressure to respond in kind will be irresistible to future majorities. The precedent will have been firmly and dramatically set.

Some Washington Democrats say: Oh, they just want to limit the rules change to nominations; they just want to make a little adjustment on nominations, which is why they have been hurtling the Senate toward a manufactured fight over a couple of the President's most controversial nominees. But Republicans have been treating the President's nominees more than fairly.

At this point in President Bush's second term he had a total of 10 judicial confirmations; and, by the way, the Republicans were in the majority in the Senate. President Bush, at this point in his second term, with a Republican majority in the Senate, had 10 judicial confirmations. So far in his second term, President Obama has had 26 judges confirmed—26, 26 to 10. Apples to apples: at this point in President Bush's term, with a Republican Senate; at this point in President Obama's term, with a Democratic Senate.

I would note that just yesterday the Senate approved two more judicial nominees. That leaves just five—just five—available to the full Senate to be confirmed. There are only five around

here. Think about that. Of the 77 Federal judicial vacancies, the President has not nominated anyone for most of them, and only 5 remain on the Senate's Executive Calendar. Moreover, only one of those nominees has been waiting more than a month to be considered.

So it is hard to see this as anything other than a manufactured crisis. There is no factual basis for it—a manufactured crisis. So the question is, a crisis to what end? Where does this lead us?

Well, one of the reasons the majority leader has refrained from changing the rules thus far is this: He fully understands—he fully understands—that majorities are fleeting, but changes to the rules are not, and breaking the rules to change the rules would fundamentally change the Senate.

Future majorities would be looking to this precedent. I do not know what the future holds, but 2 years from now I could be setting the agenda around here. Once deployed, the nuclear option may have fallout in future Congresses, actually forever altering the deliberative nature of the Senate, which has made it the institution where enduring compromises between the parties have been forged.

So it is time for sober consideration of the direction in which the Senate is being taken.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half.

The Senator from Tennessee.

FILIBUSTERS

Mr. ALEXANDER. Mr. President, for the last few weeks, I have been listening to the Republican leader ask the majority leader not to turn the Senate into a place where a majority of 51 can do anything it wants. I am on the Senate floor today to suggest three reasons why I believe the majority leader will not do that:

No. 1, he said he would not. Senators keep their word.

No. 2, in 2007, the majority leader said to do so would be the end of the Senate. There have not been many majority leaders in the history of the Senate. I know none of them want to have written on their tombstone: He presided over "the end of the Senate."

No. 3, the majority leader is an able and experienced legislator. He knows if Democrats find a way to use 51 votes to do anything they want to do, it will not be very long until Republicans find a way, if we are in the majority, to use 51 votes to do whatever we want to do.

So let me take these three reasons one by one. First, the majority leader has given his word. The Republican leader mentioned that. At the beginning of the last two Congresses, at the request of the Republican leader, I worked with several Democrats and Republicans to change the rules of the Senate to make it work better. We succeeded in that. We talked about it, negotiated, and we voted those changes through.

We eliminated the secret hold. We abolished 169 Senate-confirmed positions. We expedited 273 more. We reduced the time to confirm district judges. We made it easier to go to conference. In exchange for all of that, the majority leader said he would not support changes in the rules in this 2-year session of Congress except through the regular order. He said:

The minority leader and I have discussed this on numerous occasions.

This is the Democratic leader.

The proper way to change the Senate rules is through the procedures established in the rules. I will oppose any effort in this Congress or the next to change the Senate rules other than through the regular order.

I ask unanimous consent to have printed, following my remarks, the majority leader's comments.

Second, I was a new Senator 10 years ago in 2003. I was absolutely infuriated by what the Democrats did in the first few months. For the first time in history, they used the filibuster to deny a President's judicial nominations for the circuit courts of appeal. It had never ever been done before. So Republicans threatened the so-called "nuclear option." We threatened we would change the rules of the Senate so we could work our will with 51 votes.

Senator REID said at the time "that would be the end of the Senate." He wrote that in his book called "The Good Fight" in 2007. It is the most eloquent statement I have heard about why changing the rules of the Senate to give a majority the right to do anything it wants with 51 votes is a bad idea. I wish to read a few sentences from Senator REID's book "The Good Fight," written in 2007.

Senator Frist of Tennessee, who was the majority leader, had decided to pursue a rules change that would kill the filibuster for judicial nominations.

Sounds familiar.

And once you open the Pandora's box, it was just a matter of time before a Senate leader who couldn't get his way on something moved to eliminate the filibuster for regular business as well. That, simply put, would be the end of the United States Senate.

It is the genius of the Founders that they conceived the Senate as a solution to the small state / big state problem. And central to that solution was the protection of the

rights of the minority. A filibuster is the minority's way of not allowing the majority to shut off debate. And without robust debate, the Senate is crippled. Such a move would transform the body into an institution that looked like the House of Representatives where everything passes with a simple majority. And it would tamper dangerously with the Senate's advise-and-consent function as enshrined in the Constitution. If even the most controversial nominee could simply be rubber stamped by a simple majority, advise and consent would be gutted. Trent Lott of Mississippi knew what he was talking about when he coined the name for what they were doing the nuclear weapon.

One more paragraph.

But that was their point. They knew—Lott knew—if they trifled with the basic framework of the Senate like that, it would be nuclear. They knew that it would be a very radical thing to do. They knew that it would shut the Senate down . . . there will come a time when we will be gone.

This is Senator REID talking.

There will come a time when we will all be gone, and the institutions that we now serve will be run by men and women not yet living. And those institutions will either function well because we have taken care of them or they will be in disarray and someone else's problem to solve. Well, because the Republicans could not get their way getting some radical judges confirmed to the Federal bench, they were threatening to change the Senate so fundamentally that it would never be the same again. In a fit of partisan fury, they were trying to blow up the Senate. Senate rules can only be changed by a two-thirds vote of the Senate, or 67 Senators. The Republicans were going to do it illegally with a simple majority, or 51. Vice President Cheney was prepared to override the Senate Parliamentary. Future generations be damned.

Those are the words of the distinguished Senator from Nevada in 2007 eloquently explaining why this body is so different from the House of Representatives.

I ask unanimous consent not only to have those remarks printed in the RECORD but several more pages from Senator REID's excellent seventh chapter entitled "The Nuclear Option" in his book from 2007.

Third and finally, if the Democrats can turn the Senate into a place where a majority of 51 can do anything they want, soon a majority of 51 Republicans is going to figure out the same thing to do. After 2014, some observers have said we might even be in the majority. Senator MCCONNELL might be the Republican leader and the majority leader. After 2016, we may even have a Republican President.

Preparing for that opportunity, I wish to suggest the 10 items, briefly, I wish to see on an agenda if we Republicans are able to pass anything we want with 51 votes, as the majority leader has suggested.

No. 1, repeal ObamaCare.

No. 2, S. 2, that would be the second bill if I were the leader. I would put up Pell grants for kids. Like the GI bill for veterans, Pell grants follow students to the colleges of their choice—creating opportunity at the best colleges in the world. Why don't we do the same thing for students in kinder-

garten through the 12th grade, take the \$60 billion we spend, create a voucher for 25 million middle- and low-income children. It would be \$2,200 for each one of them, just the money we now spend. Let it follow them to any school they choose to attend, an accredited school, public or private.

No. 3 on my list, complete Yucca Mountain. I have spoken often of the importance of nuclear energy to our country. It provides 20 percent of all of our electricity, 60 percent of our clean electricity for those concerned about climate change and clean air. Since 2010, the majority leader has stalled the nuclear waste repository in Nevada. That jeopardizes our 100 reactors. That jeopardizes our source of 60 percent of our clean electricity. If we had 51 votes in the Senate, we could direct the Nuclear Regulatory Commission to issue a license. We could direct the Department of Energy to build Yucca Mountain and we could fund the money to do it.

The junior Senator from Nevada, who shares Senator REID's opposition to that, said something about this recently.

The day is going to come that either he is here or not—

That is the majority leader.

—or the Republicans take control and it's a 50-vote threshold. Those kinds of issues are the ones that concern me the most. When you are from a small State, you need as many arrows in your quiver as possible to fight back on some of these issues that you can be overtaken by. Frankly, the 60-vote threshold is what has protected and saved Nevada in the past.

I ask unanimous consent to have Senator HELLER's comments printed in the RECORD.

If all the Democrats who voted once upon a time for completing Yucca Mountain were to do so again, we could get a bipartisan majority of 51 votes today in the Senate to complete Yucca Mountain. So make no mistake, a vote to end the filibuster is a vote to complete Yucca Mountain.

Here is the rest of my list—I will do it quickly—that I would suggest to the Republican leader, as his priorities for a Senate where we could pass anything we wanted with 51 votes.

Make the Consumer Protection Bureau accountable to Congress. That would be No. 4.

No. 5, drill in the Arctic National Wildlife Refuge and build the Keystone Pipeline.

No. 6, fix the debt. It ought to be No. 1. Senator CORKER and I have a \$1 trillion reform of entitlement programs that would put us on the road toward fixing the debt.

No. 7, right to work for every State. We would reverse the presumption—create a presumption of freedom, giving workers in every State the right to work. States would have the right to opt out, to insist on forced unionism, the reverse of what we have today.

No. 8, No EPA regulation of greenhouse gases.

No. 9, Repeal the Death Tax.

Finally, No. 10, repeal Davis-Bacon, save taxpayers billions by ending the Federal mandate on contractors.

The Republican leader and I have plenty of creative colleagues. They will have their own top 10 lists. When word gets around on our side of the aisle that the Senate will be like the House of Representatives and a train can run through it without anyone slowing it down, there will be a lot of my colleagues with their own ideas about adding a lot of cars to that freight train.

Jon Meacham's book about Thomas Jefferson is one I have been reading. He reports a conversation between John Adams and Jefferson in 1798. Adams said:

No Republic could ever last which had not a senate . . . strong enough to bear up against all popular storms and passions . . .

And that—

Trusting the popular assembly for the preservation of our liberties . . . was the nearest chimera imaginable.

Alexis de Tocqueville, while traveling our country in the 1830s, saw only two great threats for our young democracy. One was Russia, one was the tyranny of the majority.

Finally, as the Republican leader so well stated, there is no excuse here for all of this talk. The Democrats are manufacturing a crisis. To suggest Republicans are holding things up unnecessarily is absolute nonsense. In fact, over the last two Congresses, we have made it easier for any President to have his or her nominations secured.

The Washington Post on March 18, the Congressional Research Service on May 23, said President Obama's nominations for the Cabinet are moving through the Senate at least as rapidly as his two predecessors. The Secretary of Energy was recently confirmed 97 to 0. There may be another three votes on Cabinet-level nominees this week.

Then as the Republican leader said, look at the Executive Calendar. Only three district and two circuit judge nominees are waiting for floor action.

As for filibusters, according to the Senate Historian, the number of Supreme Court Justices who have been denied their seats by filibuster is zero. The only possible exception is Abe Fortas, and Lyndon Johnson engineered a 45-to-43 vote so he could hold his head up while he continued to serve on the Court.

The number of Cabinet members who have been denied their seats by a filibuster in the history of the Senate is zero.

The number of district judges who have been denied their seats by a filibuster in the history of the Senate is zero. This is according to the Senate Historian and the Congressional Research Service.

So what are they talking about? I know what they are talking about. They are talking about circuit judges. That is the only exception. Why is it an exception? Because when I came to the Senate 10 years ago, the Democrats

broke historical precedent and blocked five distinguished judges of President Bush by a filibuster.

Republicans have returned the favor and blocked two of President Obama's by a filibuster, which should be a lesson for the future to those who want to change the rules. About half the Senate are serving in their first term. They may not know about the majority leader's statements in 2007. They may not know about the history of the Senate. They may have heard all of these conflicting facts and not have the right facts.

What I have given you is what the Senate Historian and the Congressional Research Service say are the facts. Of course, there have been delays. My own nomination was delayed 87 days by a Democratic Senator. I did not try to change the rules of the Senate. President Reagan's nomination of Ed Meese was delayed a year by a Democratic Senator.

No one has ever disputed our right in the Senate, regardless of who was in charge, to use our constitutional duty of advise and consent to delay and examine, sometimes cause nominations to be withdrawn or even to defeat nominees by a majority vote.

Yes, some sub-Cabinet members have been denied their seats by a filibuster. The Democrats denied John Bolton his post at the United Nations.

Senator Warren Rudman told me the story of how the Democratic Senator from New Hampshire blocked his nomination by a secret hold. Nobody knew what was happening. I asked Senator Rudman what he did about it.

He said: I ran against the so-and-so in the next election, and I beat him.

This is how Senator Rudman got to the Senate.

In summary, the idea that we have a crisis of nominations is absolute, complete nonsense, totally unsupported by the facts. It should be embarrassing to my friends on the other side to even bring it up. They should be congratulating us for helping to make it easier for any President to move nominations through.

The advise and consent is a constitutional prerogative that both parties have always defended.

There are three reasons why the majority leader will not turn the Senate into a place where a majority of 51 can do anything it wants, in my judgment: one, he said he wouldn't, and Senators keep their word; two, he said the nuclear option would be the end of the Senate. No majority leader wants written on his tombstone he presided over the end of the Senate; three, if Democrats turn the Senate into a place where 51 Senators can do anything they want, it will not be long before Republicans do the same.

To be very specific, if Senator REID and Democrats vote to allow a majority to do anything they want in the Senate and set that precedent, voting to end the filibuster will be a vote to complete Yucca Mountain.

I come with respect to the Republican and the Democratic leaders, and especially to this institution, to say let's end the threats, let's stop the nonsense, let's get back to work on immigration and the other important issues facing our country.

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

Reid made the same commitment (if anything, more broadly) on January 27, 2011, when he said:

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

The storm had been gathering all year, and word from conservative columnists and in conservative circles was that Senator Frist of Tennessee, who was the Majority Leader, had decided to pursue a rules change that would kill the filibuster for judicial nominations.

It is the genius of the founders that they conceived the Senate as a solution to the small state/big state problem. And central to that solution was the protection of the rights of the minority. A filibuster is the minority's way of not allowing the majority to shut off debate, and without robust debate, the Senate is crippled. Such a move would transform the body into an institution that looked just like the House of Representatives, where everything passes with a simple majority. And it would tamper dangerously with the Senate's advise-and-consent function as enshrined in the Constitution. If even the most controversial nominee could simply be rubber-stamped by a simple majority, advise-and-consent would be gutted. Trent Lott of Mississippi knew what he was talking about when he coined a name for what they were doing: the nuclear option.

And that was their point. They knew—Lott knew—if they trifled with the basic framework of the Senate like that, it would be nuclear. They knew that it would be a very radical thing to do. They knew that it would shut the Senate down. United States senators can be a self-regarding bunch sometimes, and I include myself in that description, but there will come a time when we will all be gone, and the institutions that we now serve will be run by men and women not yet living, and those institutions will either function well because we've taken care with them, or they will be in disarray and someone else's problem to solve. Well, because the Republicans couldn't get their way getting some radical judges confirmed to the federal bench, they were threatening to change the Senate so fundamentally that it would never be the same again. In a fit of partisan fury, they were trying to blow up the Senate. Senate rules can only be changed by a two-thirds vote of the Senate, or sixty-seven senators. The Republicans were going to do it illegally with a simple majority, or fifty-one. Vice President Cheney was prepared to overrule the Senate parliamentarian. Future generations be damned.

Given that the filibuster is a perfectly reasonable tool to effect compromise, we had been resorting to the filibuster on a few judges. And that's just the way it was. For 230 years, the U.S. Senate had been known as the world's greatest deliberative body—not always efficient, but ultimately effective.

There had once been a time when the White House would consult with home-state senators, of either party, before sending prospective judges to the Senate for confirmation. If either senator had a serious reservation about the nominee, the nomination wouldn't go forward. The process was called "blue-slips." The slips were sent to individual senators. If the slips didn't come back, there was a problem. The Bush White House ignored the blue-slip tradition, among many other traditions, and showed little deference to home-state senators.

We realized that if they were not going to adhere to our blue slips or entertain any advice from us, then they were trying to subvert the minority's ability to perform its advise-and-consent function under the Constitution. It was clear that Bush and Karl Rove were going to try to load all the courts—especially the circuit courts of appeals, because you can't count on Supreme Court vacancies. And most of the decisions are made by circuit courts anyway, so it could be said that they are the most important judicial nominees of all.

We Democrats made a decision that since the White House was ignoring the Constitutional role of the Senate, then we were going to have to delay some of the more extreme nominees. Be cautious and look closely was the byword. One rule we tried to follow was that if all Democrats on the Judiciary Committee voted no on a nominee, then we would say, "Slow down."

The Republicans immediately complained that they had never filibustered Clinton's judges, a claim that simply wasn't true. Frist himself had participated in the filibuster of the nomination of Judge Richard Paez, which at the time had been pending in the Senate for four years. When Senator Schumer had called him on it on the Senate floor, Frist had stammered to try to find a way to explain how their use of the filibuster was legitimate and ours wasn't. And moreover, it was a disingenuous claim. The reason the Republicans didn't deploy the filibuster that often when Clinton was President is that they had a majority in the Senate, and they had simply refused to report more than sixty of President Clinton's judicial nominees out of committee, saving them the trouble of a filibuster. In any case, the U.S. Senate had never reached a crisis point like this before.

In the early part of 2005, I hadn't wanted to believe it was true, and felt confident that we could certainly avoid it. We make deals in the Senate, we compromise. It is essential to the enterprise. I was determined to deal in good faith, and in a fair and open-minded way, "What I would like to do is say there is no nuclear option in this Congress." I said on the floor one day, "and then move forward." Give us a chance to show that we're going to deal with these nominees in good faith and in the ordinary course. And if you don't think we are fair, you can always come back next Congress and try to invoke the nuclear option. Because it would take a miracle for us to retake the Senate next year.

Did I regret saying this? No. Because at the time I believed it, and so did everyone else.

And in any case, we had confirmed 204, or 95 percent, of Bush's judicial nominations. It was almost inconceivable to me that the Republicans would debilitate the Senate over seven judges. But the President's man, Karl Rove, was declaring that nothing short of 100 percent confirmation rate would be acceptable to the White House, as if it were his prerogative to simply eliminate the checks-and-balances function of the Senate. Meanwhile, we were at war, gas prices were spiking, and we were doing nothing about failing pensions, failing schools, and a debt-riven economy. Where was our sense of priorities?

I had been pressing Majority Leader Bill Frist in direct talks for a compromise—one in which Democrats prevented the confirmation of some objectionable judges and confirmed some that we didn't want to confirm, all in the interest of the long-term survival of the Senate. But I had been getting nowhere. Those talks had essentially ceased by the end of February. And then Senator Frist began advertising that he was aggressively rounding up votes to change the Senate rules, and Republican senators, some quite prominent, began to announce publicly that they supported the idea. Pete Domenici of New Mexico. Thad Cochran of Mississippi. Ted Stevens of Alaska. Orrin Hatch of Utah. I was so disappointed that they were willing to throw the Senate overboard to side with a man who, it was clear, was becoming one of the worst Presidents in our history. President Bush tried at any cost to increase the power of the executive branch, and had only disdain for the legislative branch. Throughout his first term, he basically ignored Congress, and could count on getting anything he wanted from the Republicans. But from senators who had been around for a while and had a sense of obligation to the institution, I found this capitulation stunningly short-sighted. It was clear to me that Frist wanted this confrontation, no matter the consequences.

And as the weeks and months passed, it dawned on me that Frist's intransigence was owed in no small part to the fact that he was running for President. Funding the filibuster so that extremist judges could be confirmed with ease had become a rallying cry for the Republican base, especially the religious right. In fact, Senator Frist would be the featured act at "Justice Sunday," a raucous meeting at a church in Louisville on the last Sunday in April that was billed as a rally to "Stop the Filibuster Against People of Faith."

This implied, of course, that the filibuster itself was somehow anti-Christian. I found this critique, which was becoming common in those circles, to be very strange, to say the least. Democratic opposition to a few of President Bush's nominees had nothing whatsoever to do with their private religious beliefs. But that did not stop James Dobson of Focus on the Family of accusing me of "judicial tyranny to people of faith."

"The future of democracy and ordered liberty actually depends on the outcome of this struggle." Dobson declared from the pulpit at Justice Sunday.

So the battle lines were drawn.

All the while, very quietly, a small group of senators had begun to talk about ways to avert the looming disaster.

Earlier in the year, Lamar Alexander, the Republican junior senator from Tennessee, had gone to the floor and given a speech that hadn't gotten much notice in which he had proposed a solution. Since under Senate rules a supermajority of sixty votes is required to end a filibuster, and the makeup of the Senate stood at fifty-five in the Republican caucus and forty-five in the Democratic, Alexander had suggested that if six Republicans would pledge not to vote to change Senate rules and six Democrats would pledge to never filibuster judicial nominees, then we could dodge this bullet. This would come to be known as "the Alexander solution."

Of course, this was an imperfect solution—if the minority, be it Democratic or Republican, pledged to never use the filibuster, then you were de facto killing the filibuster anyway and may as well change the rules. But Alexander's thinking was in the right direction. In fact, I had begun talking quietly to Republican senators one by one, canvassing to see if I could get to the magic

number six as well, should Frist press a vote to change the rules. If he wanted to go that way, maybe we could win the vote outright, without having to forge a grand compromise.

I knew we had Lincoln Chafee of Rhode Island. So there was one. I thought we had the two Mainers. Olympia Snowe and Susan Collins. I thought we had a good shot at Mike DeWine of Ohio. We had a shot at Arlen Specter of Pennsylvania. Maybe Chuck Hagel of Nebraska. I knew we had a good shot at John Warner of Virginia. Warner, a former Marine and secretary of the Navy, was a man of high character. When Oliver North ran as a Republican against Senator Chuck Robb in 1994, Warner crossed party lines to campaign all over Virginia against North. I also felt that Bob Bennett of Utah would, at the end of the day, vote with us.

But these counts are very fluid and completely unreliable. It would be hard to get and keep six. We were preparing ourselves for a vote, but a vote would carry great risk.

As it turned out, Alexander's chief of staff was roommates with the chief of staff of the freshman Democratic senator from Arkansas, Mark Pryor. Pryor, whose father before him had served three terms in the Senate, had been worrying over a way to solve this thing. His chief of staff, a gravelly voiced guy from Smackover, Arkansas, named Bob Russell, got a copy of Alexander's speech from his roommate and gave it to Pryor. Alexander's idea of a bipartisan coalition got Pryor thinking, and he sought out the Tennessean and began a quiet conversation about it.

At the same time, Ben Nelson of Nebraska, one of the more conservative Democrats in the Senate, began having a similar conversation with Trent Lott. At some point they became aware of each other's efforts, and one day in late March, Pryor approached Nelson on the floor to compare notes.

Lott and Alexander would quickly drop out of any discussions. Such negotiations without Bill Frist's knowledge proved too awkward, particularly for Alexander, who was a fellow Tennessean. And even though there was antipathy between Lott and Frist over the leadership shake-up in 2002, Lott backed away as well.

But others were eager to talk.

Knowing what was at stake, John McCain and Lindsey Graham began meeting sub rosa with Pryor and Nelson. They would go to a new office each time, so as not to arouse suspicion. These four would form the nucleus of what would become the Gang of Fourteen, the group of seven Republicans and seven Democrats who would eventually bring the Senate back from the brink. Starting early on in their negotiations, Pryor and Nelson came to brief me on their talks, and I gave my quiet sanction to the enterprise. Senator Joe Lieberman came to me and said that he was going to drop out of the talks. I said, "Joe, stay, we might be able to get it done. It's a gamble. But stay and try to work something out."

Each meeting would be dedicated to some aspect of the problem, and there was a lot of back and forth about what would be the specific terminology that could trigger a filibuster. Someone, probably Pryor, suggested "extraordinary circumstances," and that's what the group would eventually settle on. What that meant is that to filibuster a judicial nominee, you'd have to have an articulable reason. And a good reason, not just fluff. Slowly, they were joined by others. Ben Nelson approached Robert Byrd to ask if he would join the effort. No one cares more about the Senate than Byrd, and he agreed, anything to preserve the rules. John Warner was the same way, and it may have been Warner's presence in the negotiations that would serve as the biggest rebuke to Frist.

Ultimately, seven Republican senators would step away from their leader, in an unmistakable comment on his recklessness.

Meanwhile, the drumbeat for the nuclear option was intensifying in Washington, and was beginning to crowd out all else. James Dobson said that the faithful were in their foxholes, with bullets whizzing overhead. In mid-March, Frist had promised to offer a compromise of some sort. A month later, nothing. In mid-April, I was with the President at a White House breakfast and took the opportunity to talk with him about it. "This nuclear option is very bad for the country, Mr. President," I said. "You shouldn't do this."

Bush protested his innocence. "I'm not involved in it at all," he said. "Not my deal." It may not have been the President's deal, but it was Karl Rove's deal.

A couple of days later, Dick Cheney spoke for the White House when he announced that the nuclear option was the way to go, and that he'd be honored to break a tie vote in the Senate when it was time to change the rules. The President had misled me and the Senate.

And that was the second time I called George Bush a liar.

The first time was over the nuclear waste repository located at Yucca Mountain, in my home state of Nevada. I have successfully opposed this facility with every fiber in me since I got to Washington, as it proposes to unsafely encase tons of radioactive waste in a geological feature that is too close to the water table, crossed by fault lines, unstable, and unsound. And Yucca Mountain posed a grave danger to the whole country, given that the waste—70,000 tons of the most poisonous substance known to man—would have to be transported over rail and road to the site from all over America, past our homes, schools, and churches. Not a good idea. President Bush committed to the people of Nevada that he was similarly opposed to Yucca Mountain, and would only allow it based on sound science. Within a few months of his election, and with a hundred scientific studies awaiting completion, Bush reversed himself. When one lies, one is a liar. I called him a liar then, and with his obvious duplicity on the nuclear option revealed by the Vice President's pronouncement, I called the President a liar again.

I then met again with Mark Pryor and Ben Nelson. I knew that they were trying to close a deal with the Gang of Fourteen. I was afraid to tell them to stop, and afraid to go forward. But I patted them on the back and off they went.

"Make a deal," I told them.

By this time, Bill Frist had been in the Senate for a decade. An affable man and a brilliant heart-lung transplant surgeon, he had been two years into his second term when Majority Leader Trent Lott had heralded Senator Strom Thurmond on his one hundredth birthday in early December 2002 by saying that if Thurmond's segregationist campaign for the presidency in 1948 had been successful, "we wouldn't have all these problems today." The uproar over Lott's comments had wounded the Majority Leader, and just before Christmas the White House had in effect ordered that Frist would replace Lott and become the new Majority Leader, the first time in Senate history that the President had chosen a Senate party leader.

As Majority Leader, Frist had almost no legislative experience and always seemed to me to be a little off balance and unsure of himself. For someone who came from a career at which he was consummate, this must have been frustrating. When I became Minority Leader after the 2004 election, I obviously got to watch Frist from a closer vantage point. My sense of his slight discomfort in

the role only deepened. In negotiations, he sometimes would not be able to commit to a position until he went back to check with his caucus, as if he was unsure of his own authority. Now, anyone in a leadership position who must constantly balance the interests of several dozen powerful people, as well as the interests of the country, can understand the challenges of such a balancing act. And to a certain extent, I was in sympathy with Frist. But my sympathy had limits. What Frist was doing in driving the nuclear-option train was extremely reckless, and betrayed no concern for the long-term welfare of the institution. There are senators who are institutionalists and there are senators who are not. Frist was not. He might not mind, or fully grasp, the damage that he was about to do just to gain short-term advantage. I reminded him: We are in the minority at the moment, but we won't always be. You will regret this if you do it.

By this time, the Senate was a swirl of activity. More senators were taking to the floor to declare themselves in support of the nuclear option or issue stern denunciations. Senator Byrd gave a very dramatic speech excoriating Frist for closely aligning his drive to the nuclear option with the religious right's drive to pack the judiciary. And he insisted that Frist remain on the floor to hear it. "My wife and I will soon be married, the Lord willing, in about sixteen or seventeen more days, sixty-eight years." Byrd said. "We were both put under the water in that old churchyard pool under the apple orchard in West Virginia, the old Missionary Baptist Church there. Both Erma and I went under the water. So I speak as a born-again Christian. You hear that term thrown around. I have never made a big whoop-de-do about being a born-again Christian, but I speak as a born-again Christian.

"Hear me, all you evangelicals out there! Hear me!"

Byrd was in his eighth term in the Senate, and before that had served three terms in the House. He has been in Congress about 25 percent of the time we have been a country. So his testimony carried great power.

Negotiations among the Gang of Fourteen continued feverishly. Not even a panicked Capitol evacuation in early May could stop them. An unidentified plane had violated the airspace over Washington, and the Capitol had to be cleared in a hurry, but McCain, Pryor, and Nelson continued talking nonetheless.

Joe Lieberman of Connecticut came to me again, concerned. Talks had gotten down to specific judges, and the group was trying to hammer out a number that would be acceptable to confirm. Senator Lieberman was worried that our side might have been giving away too much, and that in his view the group was in danger of hatching a deal that would be unacceptable to Democrats. He wanted to drop out. I told him again that he couldn't. The future of the country could well depend on his participation.

"Joe. I need you there," I told him. "Help protect us."

Once the existence of the Gang of Fourteen became known, once a ferocious scrutiny became trained on them, the group started to feel an even more determined sense of mission. They realized that they were doing something crucial, and loyalty to party became less important than loyalty to the Senate and to the country, at least for a little while.

And until the day that a deal was struck, the Republican leader's office boasted that no such deal was possible.

As if to underscore this point, and see his game of chicken through to the end, Frist actually scheduled a vote to change Rule XXII of the Standing Rules of the Senate for May 24.

The Democratic senators came to see me and told me that they had completed a deal to stop the nuclear option. They had done it. I told Pryor, Nelson, and Salazar, "Let's hope it works." It did. And on the evening of May 23, 2005, the brave Gang of Fourteen, patriots all—Pryor of Arkansas, McCain of Arizona, Nelson of Nebraska, Graham of South Carolina, Salazar of Colorado, Warner of Virginia, Inouye of Hawaii, Snowe of Maine, Lieberman of Connecticut, Collins of Maine, Landrieu of Louisiana, DeWine of Ohio, Byrd of West Virginia, and Chafee of Rhode Island—signed a Memorandum of Understanding, in which they allowed for the consideration of three of the disputed judges, and rabled a couple more. Personally I found these judges unacceptable, but such is compromise. The deal that was struck was very similar to that which I had proposed to Bill Frist months before.

As Frist and I were just about to discuss the Gang of Fourteen deal before hordes of gathered press, Susan McCue, my chief of staff, pulled me aside and said, "Stop smiling so much. Don't gloat."

I didn't gloat, but I was indeed smiling. I couldn't help it.

"I remain concerned," Heller told *The Washington Examiner*. "The nuclear option, they claim will be limited only to judicial nominations. But I don't believe that for a second. Once they get a taste of the 50-vote threshold, I think this thing spreads to every other issue."

"The day is going to come that either he's not here or the Republicans take control and if it's a 50-vote threshold, those kind of issues are the ones that concern me the most," Heller said. "When you're from a small state, you need as many arrows in your quiver as possible to fight back on some of these issues that you can be overtaken by. And, frankly, this 60-vote threshold is what has protected and saved Nevada in the past."

I yield the floor.

THE PRESIDING OFFICER. The Republican leader.

MR. MCCONNELL. I ask unanimous consent that the Senator from Tennessee and I be allowed to engage in a colloquy.

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

MR. MCCONNELL. I wish to congratulate my friend from Tennessee on a brilliant presentation on the history of the Senate and the current manufactured crisis we face.

The only comment I would add, just by way of reiterating the point my friend has already made, the Senator quoted Jefferson and Adams about the tyranny of the majority.

MR. ALEXANDER. That was de Tocqueville.

MR. MCCONNELL. De Tocqueville. Washington, when he was presiding over the Constitutional Convention, according to legend, asked what will the Senate be like. He said: Well, it will be like the saucer under the teacup. The tea will slosh out of the cup, down into the saucer, and cool off.

In other words, from the very beginning, it was anticipated by the wise men who wrote the Constitution that the Senate would be a place where things slowed down and were thought over. That has been the tradition for a very long time throughout the history of our country.

Until the First World War, it was not possible to stop a debate at all. Cloture

was actually adopted by the Senate in the late teens of the previous century and then lowered in the 1970s to the current two-thirds.

Looking at the history of our country, it is pretty clear to me that the Senate has done exactly what Washington thought it would do, slow things down and move them to the middle, and has been a place where bipartisan compromise was by and large achieved, except in periods of time where either side had a very big majority which, of course, our friends on the other side had in 2009 and 2010.

The American people took a look at that and decided to issue a national restraining order and restore the kind of Senate they are more comfortable with that operates, to use a football analogy, between the two 45-yard lines. There is not a doubt in my mind that if the majority breaks the rules of the Senate, to change the rules of the Senate with regard to nominations, the next majority will do it for everything. The Senator from Tennessee has pointed that out.

I wouldn't be able to argue a year and a half from now, if I were the majority leader, to my colleagues that we shouldn't enact our legislative agenda with a simple 51 votes, having seen what the previous majority just did. I mean, there would be no rational basis for that.

It is appropriate to talk about what our agenda would be. I would be, of course, consulting with my colleagues on what our agenda would be, but I don't think there is any doubt that virtually every Member of the Senate Republican conference would think repealing ObamaCare would be job one of a new Republican majority. I don't even have to guess is what likely to be the No. 1 priority: repealing ObamaCare.

The Senator from Tennessee mentioned drilling in ANWR. There has been a majority in the Senate for quite some time, both when the Democrats were in the majority and when the Republicans were in the majority, to lift the ban against drilling in ANWR.

I think that would certainly be on any top 10 list that I was able to put together as majority leader. Approving the Keystone Pipeline, we have gotten as many as 60 votes for that. We have gotten as many as 56 votes for ANWR.

What about repealing the death tax? We had as many as 57 votes back in 2006 to repeal the death tax entirely. There is a new bill being introduced this afternoon by our colleague, Senator THUNE of South Dakota, to get rid of the death tax altogether, to get rid of the dilemma every American faces. He has to visit the IRS and the undertaker on the same day, the government's final outrage.

These are the kinds of priorities our Members feel strongly about. I think I would be hard-pressed, with the new majority—having just witnessed the way the Senate was changed with a simple majority by the current Demo-

cratic majority—to argue that we should restrain ourselves from taking full advantage of this new Senate.

From the country's point of view, it is a huge step in the wrong direction. I am not advocating that, but I would be hard-pressed to say to our Members, the precedence having been set, why should we confine it to nominations.

Mr. ALEXANDER. I agree with the Republican leader.

Of course, the distinguished majority leader agrees with the Senator as well. He said in his book in 2007—I read it, but I will read it again—when talking about the Republican efforts several years ago, Republicans were so upset with actual obstructionism, as opposed to made up obstructionism, which is what we see here. They were so upset that this is what Senator REID said: If the majority leader pursues a rules change that would kill the filibuster for judicial nominations. And once you open that Pandora's box, it was just a matter of time before a Senate leader who couldn't get his way on something moved to eliminate the filibuster from regular business as well, and that, simply put, would be the end of the Senate.

What that means is the Senate would be similar to the House. A freight train could run through it. Many Senators have not visited the House Rules Committee. I have. It is an interesting place.

The Republicans can run the House by a single vote. But if one goes up to the Rules Committee—and I am sure the distinguished Republican leader has been there—there are thirteen chairs, thirteen members.

How many Democrats do you suppose have those chairs? Four. How many Republicans have those chairs? Nine. It is 2 to 1 plus 1 majority in the House Rules Committee. In the House of Representatives, whatever the majority wants to do it can do.

If we have a body with 51 votes to make all the decisions, and if I and others are deeply concerned about the nuclear waste sitting around in some of these 100 reactors—we have several of us on both sides of the aisle who were working on legislation like that—and we want it put in a repository, legally, where it is supposed to be, we have 51 votes, if they all vote the way they voted before, to order the government to open Yucca Mountain and put the nuclear waste there. This is what we can do with 51 votes.

The way our government is designed, the House can order that, which they have. The Senate hasn't because the majority leader has been able to make this body stop and think about whether it wanted to do this. I may not like that result, but I prefer that process for the good of the country to give us the time to work things out.

I would ask the Republican leader, hasn't it always been the responsibility, maybe the chief responsibility, of the Republican leader and the Democratic leader to preserve this institu-

tion? Newer Senators may not know as much about it, may not have as long a view as they have.

Over the time the minority leader has been here, hasn't that been—I would ask through the Chair to the Republican leader, hasn't that been the responsibility of the leaders of the Senate?

Mr. MCCONNELL. I will say to my friend from Tennessee, the Senator is absolutely right. The one thing the two leaders have always agreed on is to protect the integrity of the institution.

For those who may be observing this colloquy, they probably wonder why it is occurring. I wish to explain to our colleagues—and to any others who may be watching while this colloquy occurs—Senate Republicans are tired of the culture of intimidation.

We have seen it over in the executive branch with the IRS and we have seen it at HHS with regard to ObamaCare; this feeling that if you are not in the majority you need to sit down, shut up, and get out of the way. That mentality, that arrogance of power, has seeped into the Senate.

The culture of intimidation is this: Do what I want to do when I want to do it or I will break the rules of the Senate—change the rules of the Senate by breaking the rules of the Senate. In other words, it is the intimidation, the threat that has been hanging over the Senate as an institution for the last few months. It needs to come to an end.

I believe that is why the Senator from Tennessee and myself would like the majority leader to answer the question does he intend to keep his word.

Senators shouldn't have to walk on eggshells around here, afraid to exercise the rights they have under the rules of the Senate. There is no question that all Senators have a lot of power in this body. This body operates on unanimous consent. That means if any 1 of the 100 wants to deny that, it makes it hard. That is the way the Senate has been for a very long time.

I want the culture of intimidation by the majority in the Senate to come to an end. The way it can end is for the majority leader to say: My word is good, and we will quit having this culture of intimidation hanging over the Senate for the next year and a half.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. I wish to congratulate the Republican leader on his remarks. It is important for those watching to know there are plenty of us here who know how the Senate is supposed to work, and we are doing that. We passed the farm bill, and we passed the water resources bill, involving locks, dams, and ports in this country. We did that the way the Senate is supposed to work. We worked across party lines. We got a consensus, got more than the majority, and did it.

We have eight Senators who have come forward with an immigration bill, a tough issue, but we are working together to see if we can resolve that.

I am part of a group of six or seven Senators who are trying to lower interest rates for 100 percent of students, not just 40 percent. We are not trying to ram it through with 51 votes, but we are trying to get a consensus and then pass it and send it to the House. Hopefully, they will do it.

When the great civil rights bills passed, they were a consensus, and the country accepted them because they were important pieces of legislation.

When the Republican leader and I were young—I was here and he was almost here—we saw Senator Dirksen and President Johnson work together to get a supermajority to say to the country it is time to move ahead on civil rights. That is the way the Senate is supposed to work. Let's stop the threats, stop the intimidation and recognize the progress we have made and get back to work on immigration.

Mr. McCONNELL. I wish to conclude by thanking the Senator from Tennessee for a very impressive presentation and for his reminding us all of what makes the Senate great.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Are we in morning business?

The PRESIDING OFFICER. We are.

MEDICARE

Mr. FRANKEN. Mr. President, I rise to talk about Medicare solvency. I know that to many people the words "Medicare solvency," which is the ability of the Medicare program to meet its financial obligations, sounds like an invitation to a nice nap.

You and I pay into Medicare every month, and we need to know that the benefits we paid for will be there when we need them, and not just that. I need to know Medicare will be around to cover my daughter and my new grandson when they become eligible. That is what Medicare solvency is about.

A couple of weeks ago we got some good news. According to the annual report released by the Medicare board of trustees, Medicare will stay solvent for 2 years longer than previously estimated.

There are a lot of things that are contributing to Medicare solvency, but one big thing is health reform. In fact, Medicare will be solvent for a total of 9 years longer than before we passed health reform. Let me say that again. The life of Medicare is 9 years longer today than it was before we passed health reform.

HHS Secretary Sebelius said:

The Affordable Care Act has helped put Medicare on more stable ground without eliminating a single benefit.

The point is that health reform is not just about making our health coverage more comprehensive, it is not just making sure when we get sick we can get the care we need, it is also making Medicare more efficient. It is extending the life of Medicare so that Medicare

can keep supporting our parents and will be able to support our kids.

How exactly has health reform helped extend the solvency of Medicare? Well, to start with, it stopped Medicare from overpaying private insurers. As you might know, seniors can choose to get their Medicare benefits directly from the Medicare Program or get them through a private insurance program that gets paid by Medicare, which is called Medicare Advantage. Before we passed health reform, we were overpaying these private insurers by about 14 percent. So we reduced what Medicare pays these private insurance companies. In fact, over the next 10 years we are going to reduce these insurance payments by about 14 percent, which CBO scored in 2010 as saving Medicare \$136 billion over 10 years.

I will note that we were told by some of our colleagues that if we did this, insurance companies were going to leave the market, that we weren't going to have Medicare Advantage anymore. Well, so far, enrollment in Medicare Advantage has gone up by 10 percent, and I am glad about that because Medicare Advantage serves an important purpose for millions of seniors across our country.

We are also adjusting reimbursements to hospitals downward. Why and how does that work for hospitals? When you insure 31 million people who previously didn't have insurance, hospitals are no longer on the line for uncompensated care when those 31 million people go into the emergency room. The hospitals aren't left holding the bag for all of those costs.

And we didn't just extend the life of Medicare by 9 years; while we were at it, we expanded benefits for Medicare beneficiaries. I go to a lot of senior centers and nursing homes in my home State of Minnesota, and I have to tell you, seniors are very happy about their new benefits. They are very happy about the new free preventive care they get—the wellness checkups and the colonoscopies and the mammograms. They know and we know that an ounce of prevention is worth a pound of cure.

Do you know what else we are doing with that money? We are closing the prescription drug doughnut hole—the gap in coverage under Medicare where seniors have to pay the full costs of their prescription drugs in that gap. Seniors are very happy about that. For more than one-third of seniors, Social Security provides more than 90 percent of their income, and for one-quarter of elderly beneficiaries, Social Security is the sole source of their retirement income. So when Medicare stops covering the cost of their prescription drugs in the doughnut hole, that is serious, and sometimes these seniors have to decide between food and heat and medicine. Well, because we have been closing this doughnut hole, many don't have to make that impossible choice anymore.

When I was running for the Senate back in 2008, a nurse in Cambridge, MN,

told me about a senior being hospitalized. She was being treated by the doctors and nurses so that she would be well enough to leave the hospital, and when she left the hospital, they would make sure to give her the prescriptions she needed.

After a few days, this nurse would call the pharmacy and ask: Has Mrs. Johnson come in and filled those prescriptions?

The pharmacist would say: No, she hasn't.

Why was that? Because she was in the doughnut hole. And guess what. In 10 days or in 2 weeks or whatever, Mrs. Johnson would end up back in the hospital because she couldn't afford her medicine. These readmissions cost our health care system a lot of money. But now, because we are closing the doughnut hole as part of the health care law, these seniors are able to get their health care. This is improving their health, and it is saving us money.

So we have increased benefits and extended the life of Medicare, and that was done as part of health care reform.

Many of the provisions of the health care reform law will make our health care system more efficient and will lower costs in the long run. I wish to touch briefly on one I authored that is already keeping costs down for families in Minnesota and across our country. The provision of the health care reform law that I authored is based on a Minnesota law in a way. In 1993 Minnesota wrote a law that insurance companies had to report their medical loss ratio, and that is the piece I wrote into the law.

What is the medical loss ratio? Medical loss ratio is the percentage of premiums a health insurer receives that goes to actual health care—to actual health care, not to administrative costs, not to marketing costs, not to profits, not to CEO salaries, but actual health care.

Starting in 1993 Minnesota health insurers had to submit to the commissioner of commerce—the Minnesota Department of Commerce—their medical loss ratio. They had to compute it and submit it. I took that and I put a little wrinkle into it. I wrote something called the 80–20 rule, which says that insurance companies have to spend at least 80 percent of their premiums on actual health care for small group policies and individual policies and 85 percent for large group policies, and if they do not meet that, the health insurer has to rebate the difference. Well, thanks to this provision of the law, last year more than 12 million Americans benefited from \$1.1 billion in rebates from insurers that did not meet the 80–20 rule, including 123,000 consumers in Minnesota.

In a new report, the Kaiser Family Foundation estimates that premiums in the individual market would have been \$1.9 billion higher last year if it weren't for the medical loss ratio rule and they would have been \$856 million higher in 2011. That is more than \$2.75