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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Oregon.

ORDER OF PROCEDURE

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

So after Senator UDALL, there would be Senator GRASSLEY. After Senator GRASSLEY, I yield my time to my friend and colleague Senator MERKLEY who would speak. At that time there would be a Republican who would be next in the queue to speak.

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

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

The Senator from New Mexico.

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

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

The PRESIDING OFFICER. Is there objection?

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

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from New Mexico.

AMENDING SENATE RULES

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

The PRESIDING OFFICER. Is there objection?

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

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

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

The PRESIDING OFFICER. That is correct.

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

Madam President, I rise today to introduce the resolution I just mentioned. I have worked very hard with all of my colleagues, including my two colleagues from Iowa and Oregon, Senator MERKLEY and Senator HARKIN, to reform the rules of this unique and prestigious body. I do so after coming to the floor last January—January 25, in fact, now almost 1 year ago—to issue a warning, a warning because of partisan rancor and the Senate's own incapacitating rules, that this body was failing to represent the best interests of the American people. The unprecedented abuse of the filibuster, of secret holds, and of other procedural tactics routinely prevent the Senate from getting its work done. I do believe it is the American people sent us here to do. Since that day in January things haven't gotten better. In fact, I would
say they have gotten worse—much worse. Here in the Senate open and honest debate has been replaced with secret backroom deals and partisan gridlock. Up-or-down votes on important issues have been unreasonably delayed and blocked entirely at the whim of a single Senator. Last year, for example, one committee had almost every piece of legislation held up by holds from one Senator.

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

The American people are fed up with it. They are fed up with us, and I don’t blame them. We need to bring the workings of the Senate out of the shadows and into the accountability that begins with addressing our own dysfunction, specifically the source of that dysfunction—the Senate rules.

Last year the Senate Rules Committee took a hard look at how our rules have become so abused and how this Chamber no longer functions as our Founders intended. I applaud Chairman SCHUMER and his excellent staff for devoting so much time to this important issue. I thank Senator ALEXANDER and Senator ROCKEFELLER, sitting as President of the Senate, for their work and encouraging Republican colleagues on the committee, and we have had some good exchanges. They know we had six hearings and heard from some of the most respected experts in the field.

But these hearings demonstrated that the rules are not broken for one party, or for only the majority. Today the Democrats lament the abuse of the filibuster, our Republican colleagues explain they are not allowed to offer amendments to legislation. Five years ago, those roles were reversed. Rather than continue on this destructive path, we should adopt rules that allow a majority to act while protecting the minority’s right to be heard. Whichever party is in the majority, they must be able to do the people’s business.

I think that is what Senator HARKIN spoke so persuasively to in his comments yesterday—that the majority has to be able to govern. The filibuster is being used the minority thwart the majority’s ability to govern.

At a hearing in September, I testified before the committee about my procedural plan for amending the Senate’s rules—the constitutional option. Unlike the specific changes to the rules proposed by other Senators and experts, my proposal is to make the Senate of each Congress accountable for all of our rules. This is what the Constitution provides for, and it is what our Founders intended.

Rule XXII is the most obvious example of the need for reform. Last amended in 1975, rule XXII demonstrates what happens when the Members of the current Senate have no ability to amend the rules adopted long ago—rules that got abused.

I have said this before, but it bears repeating. Of the 100 Members of the Senate, only two of us have had the opportunity to vote on the cloture requirement in rule XXII—Senators INOUYE and LEAHY. So if 98 of us haven’t voted on the rule, what is the effect? Well, the effect is that we are not held accountable when the rule gets abused, and with a requirement of 67 votes for any rules change that is a whole lot of power without restraint.

But we can change this. We can restore accountability to the Senate. Many of my colleagues, as well as constitutional scholars, agree with me that a simple majority of the Senate can end debate on the first step and adopt its rules at the beginning of a new Congress.

Critics of my position argue that the rules can only be changed in accordance with the current rules, and that rule XXII requires two-thirds of Senators present and voting to end debate on a change to the Senate rules.

Since this rule was first adopted in 1917, members of both parties have rejected this argument on many occasions.

In fact, advisory rulings by Vice Presidents Nixon, Humphrey, and Rockefeller, sitting as President of the Senate, have stated that a Senate, at the beginning of a Congress, is not bound by the cloture requirement imposed by a previous Senate. They went on to say that each new Senate may end debate on a proposal to adopt or amend the standing rules by a majority vote. That bears repeating—by a majority vote cloture and amendment, majority vote.

Even in today’s more partisan environment I hope my colleagues will extend to us the same courtesy, and our constitutional rights will be protected as we continue to debate the various rules reform proposals at the beginning of this Congress.

In 2005, Senator HATCH—someone who understands constitutional issues perhaps better than any other Member of this Chamber—wrote the following:

The compelling conclusion is that, before the Senate readopts Rule XXII by acquiescence, a simple majority can invoke cloture and adopt a rules change. This is the basis for Vice President Nixon’s advisory opinion in 1967. As he outlined, the Senate’s right to determine its procedural rules derives from the Constitution itself and, therefore, “can not be restricted or limited by rules adopted by a majority of the Senate in a previous Congress.” So it is clear that the Senate, at the beginning of a new Congress, can invoke cloture and amend its rules by a simple majority.

That was Senator HATCH’s quote. As Senator ALEXANDER and Senator CORKER know, he was for many years chairman of the Judiciary Committee, and I think that is a very powerful quote.

This is the basis for introducing our resolution today, just as reformers have done at the beginning of Congresses in the 1950s, 1970s, and it is why I am here on the floor on the first day—to make clear I am not acquiescing to the rule XXII adopted by the Senate over 35 years ago. That Senate tried to tie the hands of all future Senators by leaving the requirement in rule XXII for two-thirds of the Senate to vote to end a filibuster on a rules change. But this is not what our Founders intended.

Article I, section 5 of the Constitution clearly states that “each House may determine the Rules of its Proceedings.” There is no requirement for a supermajority to adopt our rules, and the Constitution makes it very clear we are not held accountable to a supermajority. Last year the Senate Rules Committee took a hard look at how our rules have become so abused and how this Chamber no longer functions as our Founders intended. I applaud Chairman SCHUMER and his excellent staff for devoting so much time to this important issue. I thank Senator ALEXANDER and Senator ROCKEFELLER, sitting as President of the Senate, for their work and encouraging Republican colleagues on the committee, and we have had some good exchanges. They know we had six hearings and heard from some of the most respected experts in the field.

But these hearings demonstrated that the rules are not broken for one party, or for only the majority. Today the Democrats lament the abuse of the filibuster, our Republican colleagues explain they are not allowed to offer amendments to legislation. Five years ago, those roles were reversed. Rather than continue on this destructive path, we should adopt rules that allow a majority to act while protecting the minority’s right to be heard. Whichever party is in the majority, they must be able to do the people’s business.

I think that is what Senator HARKIN spoke so persuasively to in his comments yesterday—that the majority has to be able to govern. The filibuster is being used the minority thwart the majority’s ability to govern.

At a hearing in September, I testified before the committee about my procedural plan for amending the Senate’s rules—the constitutional option. Unlike the specific changes to the rules proposed by other Senators and experts, my proposal is to make the Senate of each Congress accountable for all of our rules. This is what the Constitution provides for, and it is what our Founders intended.
on this path for a while now, and I think the results are pretty clear—or we can take a second path: We can take a good, hard look at our rules, how they incentivize obstructionism, how they inhibit rather than promote debate, and how they prevent bipartisan cooperation. And then we should implement commonsense reforms to meet these challenges, reforms that will restore the uniquely deliberative nature of this body, while also allowing it to function more efficiently.

I contend that we not only should but have a duty to choose the second path. We owe it to the American people and to the future of this institution we all serve.

The reform resolution we introduce today is our attempt at the second path. It contains five reforms that should garner broad, bipartisan support—if we can act for the good of the country and not the good of our party.

The first two provisions in our resolution address the debate on motions to proceed and secret holds. These are not new issues. Making the motion to proceed nondebatable or limiting debate on such a motion has had bipartisan support for decades and is often mentioned as a way to end the abuse of holds.

I was privileged to be here for Senator Byrd’s final Rules Committee hearing, where he stated:

He was a long-time Republican member of the Senate, and he supported that.

The fourth provision in the resolution, which Senator Merkley will discuss later this evening, is a bellwether. We want to replace a silent filibuster with a talking filibuster. The bill we introduce makes the Senate the same... or limiting debate to a reasonable time on such motions.

In January, 1979, Senator Byrd—then-majority leader—took to the Senate floor and said unlimited debate on nominations—something that is not possible on nominations.

Instead, the minority now requires the Senate to use this tool to simply prevent it from moving on to other business.

These reforms will not, as some have contended, make the Senate the same as the House. We understand, and respect, the Framers intent in structuring the Senate to be a uniquely deliberative body. Minority rights are a critical piece to its unique operations. Which is exactly why they remain protected in our reform resolution.

But the current rules have done away with any deliberation and we have instead become a uniquely dysfunctional body.

Our resolution will make actual debate a more common occurrence. It would bring our legislative process into the light, and hopefully, it would help restore the Senate’s role as the “world’s greatest deliberative body.”

With that, I will sum up and say that reform is hard work. It is hard work that our country needs and deserves.

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

In 1984, a bipartisan Study Group on Senate Practices and Procedures recommended placing a 2-hour limit on debate of a motion to proceed. That recommendation was ignored.

In 1993, Congress convened the Joint Committee on the Organization of Congress. That was a bipartisan, bicameral attempt to look at Congress and determine how it can be a better institution. My predecessor, Senator Domenici, was the co-chairman of that committee. He was a long-time Republican here, and he supported that.

The third provision in the resolution is included based on the comments of Republicans at last year’s Rules Committee hearings. Early in the debate, Democrats complained about filibusters on motions to proceed, Republicans responded that it was their only recourse because the majority leader fills the amendment tree and prevents them from offering amendments. Our resolution would establish a limit of 30 hours to 1. Postcloture time is meant for debating and voting on amendments—something that is not possible on nominations.

Secondly, the minority now requires the Senate to use this tool to simply prevent it from moving on to other business.

These reforms will not...
Changing these rules could be done by a simple majority of senators, but only on the first day of the session. Republicans have said thatRamming through such a measure would send what little comity remains in the chamber.

Nonetheless, the fear of such a vote has led Republican leaders to negotiate privately with Democrats on the creation of a compromise, possibly on amendments. Any plan that does not require filibustering senators to hold the floor and make their case to the public would fail. The Senate has been crippled long enough.

[From the New York Times, Jan. 1, 2011]

MINNEAPOLIS, MN—We all have hopes for the New Year. Here’s one of mine: filibuster reform. It was around this time 36 years ago—during a different recession—that I was part of a bipartisan effort to reform Senate Rule 22, the cloture rule. At the time, 67 votes were needed to cut off debate and thus end a filibuster, and nothing was getting done. After long negotiations, a compromise lowered to 60 the cloture vote requirement on legislation and nominations. We hoped this would preserve the right of debate and deliberation while avoiding paralysis, and for a while it did.

But it’s now clear that our reform was insufficient. More partisan gridlock has followed. Senate Rule 22, the simple majority vote, is a simple majority vote. I wholeheartedly support his effort and encourage both Democrats and Republicans to cooperate with him. The filibuster needs to be eliminated, but it must no longer be so easy to use.

Mr. UDALL of New Mexico. I know my colleague, AMY KLOBUCHAR, is here. Senator Mondale was a distinguished former Vice President and leader in the Senate, and he wrote the very passage of this effort. Time has shown that I that I have just had printed in the RECORD.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, my colleagues and any of the public watching the debate today know there is a great partisan divide thus far. Senator WYDEN has already referred to the motion he and I are putting before the Senate. Senator WYDEN, a Democrat, and I, a Republican, are joined also by Senator MCCASKILL, who is the President pro tempore now, as well as Senator COLLINS, in this effort. It is the only bipartisan issue before the Senate this week that I believe that because I think the public ought to know that not everything in the Senate is partisan.

Senator WYDEN and I have been chipping away at the informal, backroom process known as secret holds in the Senate. We have been working on this for well over 10 years. So it should not surprise anybody that we are back again at the start of another Congress, joined, as I said, by Senator McCaskill of Missouri, who was very helpful in our pushing this issue to the forefront at the end of the last Congress, and, as I said, I am pleased that we have Senator COLLINS on board again.

There has been a lot of talk lately about the possibility of far-reaching reforms to how the Senate does business that have been hastily conceived and could shift the traditional balance between the rights of the majority and the rights of the minority parties.

In contrast, our resolution by Senator WYDEN and I is neither of those two things. In other words, it does not shift any balance between the majority and the minority.

This resolution is well thought out, a bipartisan reform effort that has been the subject of two committee hearings and numerous careful revisions over several years. In no way does it alter the balance of power between the minority and majority parties, nor does it impact the right of any individual Senator to withhold his consent when unanimous consent is requested. In the old days when Senators conducted much of their daily business from their desks on the Senate floor and were on the Senate floor for most of the day, it was quite a simple matter for any Senator at that time to stand up and say “I object” when necessary, if they really objected to a unanimous consent request, and that was it. That stopped it. Now, since Senators spend much of their time in Senate offices, they are forced to vote on any move out of the Senate floor because of the obligation of committee hearings, the obligation of meeting with constituents, and a lot of other obligations we have, we now tend to rely upon our majority leader in the case of the majority leader in the case of the Democrats or the minority leader in the case of the Republicans to protect our rights, privileges, and prerogatives as individual Senators by asking those leaders or their substitutes to object on our behalf. Just as any Senator has the right to stand on the Senate floor and publicly say “I object,” it is perfectly legitimate to ask another Senator to object on our behalf if he cannot make it to the floor when unanimous consent is requested. By the same token, Senators have no inherent right to have others object on their behalf while at the same time keeping their identity secret, thus shielding their legislative actions from the public, because that is not transparency and it is obviously not being accountable.

What I object to is not the use of the word “holds” or the process of holding up something in the Senate, but I object to what is called secret holds. The adjective “secret” is what we are fighting. If a Senator has a legitimate reason to object to proceeding to a bill or a nominee, then he or she ought to have the guts to do so publicly.

A Senator may object because he does not agree to a provision of a bill and therefore cannot in good conscience grant consent or because the Senator has not had adequate opportunity to review the matter at hand. Regardless, we should have no fear of being held accountable by our constituents if we are acting in their interest, as we are elected to do. I have practiced publicly announcing my holds for many years, and it has not hurt one bit. In fact, some of the Senators who are now objecting have already been protecting their prerogatives to review legislation before granting consent to its consideration or passage are also quite public about it.
In short, there is no legitimate reason for any Senator, if they place a hold, to have that hold be secret.

How does our proposal achieve transparency and the resultant accountability? In our proposed standing order, for the minority leader without recognizing a hold, the Senator placing the hold must get a statement in the RECORD within 1 session day and must give permission to their leader at the time they place the hold to object in their name, not in the name of the leader. The Senator will automatically have permission to name the Senator on whose behalf they are objecting, there will no longer be any expectation or pressure on the leader to keep the hold secret.

Further, if a Senator objects to a unanimous consent request and does not name another Senator as having the objection, then the objecting Senator will be listed as having the hold. This will end entirely, once and for all, the situation where one Senator objects but is able to remain very coy about whether it is their own objection or some unnamed Senator. All objections will have to be owned up to.

Again, our proposal protects the right of individual Senators to withhold their consent while ensuring transparency and public accountability. In Congress, as well as almost anywhere in the Federal Government—except maybe national security issues—the public’s business always ought to be public and the people who are involved in the public’s business ought to stand behind their actions. As I have repeatedly said, the Senate’s business ought to be done more in the public than it is, and most of it is public, but this secret hold puts a mystery about things going on in Washington that hurts the credibility of the institution.

This principle of accountability and transparency is the principle that I think the vast majority, if not all, of Senators can get behind. I believe the time has come for this simple, commonsense reform.

I yield the floor. Under the UC, if it is permissible to retain the remainder of our time, I do that.

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

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The time is 9:50 a.m. Senator MURKLEY.

Mr. MURKLEY. Madam President, the Senate is broken. During the course of my first 2 years in this body, there have been only a couple serious debates in this Chamber. The first one happened last week, an event that I think the vast majority, if not all, of Senators can get behind. I believe the time has come for this simple, commonsense reform.

From 1900 through 1970, there was an average of a single use of the filibuster each year—an average of 1 per year over that 70-year period. In the 1970s, that climbed to an average of 16 per year; in the 1980s, an average of 21 per year; in the 1990s, an average of 36 per year; between 2000 and 2010, this last decade, 48 per year; and in the last 2 years I have served in the Senate, 68 per year—an average of 68 per year or roughly 135, 136 in that 2-year period. If each one of these filibusters were to happen at the one-third mark of the Senate’s term, it’s going to result in 64 hours of delay and obstruct the very process that we’re engaged in and trying to find that balance between the rights of individual Senators to be heard and our collective responsibility for the majority to legislate. Senator UDALL has done this enormous investigation of the constitutional process for amending the rules and so many others.

The first key part in the package of reforms a number of us—16, I believe, now have cosponsored this resolution—is the talking filibuster. The talking filibuster reform is essentially to make the filibuster what all Americans believe it is; that is, if you believe so strongly that this Chamber is headed in a direction that is misguided, you should be willing to come and take this floor and make your case to the American people.

Let’s take a look at our image of that. Here we are: Jimmy Stewart.
If they want to have unanimous consent to increase that number to a higher level, then they must use the right number for the majority side, which is 60. I believe a filibuster is all about. You want to make your case before the American people: Here is why I am delaying the Senate. Here is why I am going to hold this floor. This is not a situation we can allow to go forward and I am going to stand here and make my case because American citizens, please join me and help me convince the other Senators in this room. That is the talking filibuster. But now we have the silent filibuster.

My good friend from Tennessee spoke earlier, and he said: I would like to have the talk-your-head-off proposal. I am glad to hear him back the talking filibuster—the Jimmy Stewart filibuster. That is what this reform does. It says, when folks object to concluding debate, it is because they have something to say, and so we are going to require they come to the floor and say it. It is that simple. When nobody has anything left to say, then we will proceed with a majority vote. We don't change the number of Senators required one bit. It is still 60, which completely honors that principle established in 1975.

The second main proposal is the right to amend. A number of our colleagues on both sides of the aisle have been very concerned about the fact that issues come to this floor and you can only amend if you get unanimous consent to put an amendment forward, and that only works, largely, if there is a deal that has been worked out between the majority and the minority leaders. Some of my colleagues across the aisle say they are offended by their inability to amend.

I can assure my colleagues across the aisle that I am equally offended. I wanted desperately to be able to offer amendments to President Obama's tax package that came through here because I think we could have improved it, and I think we should have seen amendments to President Obama's tax package that came through here. We do not have the ability to have a silent filibuster. We have the silent filibuster. Let's take a look at what that looks like. This is the way it works: A Senator takes their phone—maybe an old or modern phone—they call the cloakroom, and they say: I object to a majority vote, and then they go off to dinner. They do not take the floor with principle and conviction to say to the American people: Here is why I am delaying the Senate. Here is why I am going to hold this floor. This is not a situation we can allow to go forward and I am going to stand here and make my case because American citizens, please join me and help me convince the other Senators in this room. That is the talking filibuster. But now we have the silent filibuster.

The fifth point is a clear path to debate. Right now, a lot of times we suffer through just getting to debate; that is, getting onto a bill to begin with or moving to a bill. There is probably no better example of the abuse of the filibuster—which was supposed to be mutual respect for debate—being used to prevent debate. So under this proposal, there would be 2 hours of debate over whether to proceed to a bill and then we would vote. We would either go to the bill or we would not. If Senators then want to filibuster on the bill, they can do it, but it would be a talking filibuster, where we are not in the back rooms, we are out here making our case.

These five concepts are not radical concepts. They are modest steps toward saying that in this incredibly partisan environment we now operate in, where so many press outlets are attacking on every side all the time and so on and so forth, we have to set ourselves on the path to taking ourselves out of that hyperpartisan atmosphere and start to restore the Senate as a place of dialog and debate. Perhaps this is the beginning of modest steps in the right direction, and that is an extremely important way to go. So I call on my colleagues on both sides of the aisle—colleagues who have said there should be amendments, colleagues who have spoken in favor, on both sides of the aisle, of the Jimmy Stewart model of holding this floor and having talking filibusters—to approve this. Let's use the start of this 2-year period to acknowledge something is deeply wrong when, in a 2-year period, we have 135 or 138 filibusters eating up all the floor time and preventing modest bills from moving forward and keeping us on this path to gridlock. The Senate will be broken. Let's fix it.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I have enjoyed this extensive opportunity to hear my colleagues on a very important subject about what the nature of the Senate will be. I am going to have about 10 minutes of remarks on the comments of Senators MERKLEY and UDALL, and then I will yield to Senators WYDEN and UDALL, and then I will yield to Senator BYRD.

If I could say anything from deep down within me to my colleagues who are so exercised about this, it would be this: Before we change the rules, use the rules.

We talk about Senator Byrd a lot because he understood the rules so well. I have often told the story of when Senator Baker became the Republican majority leader in 1981. He went to see Senator Byrd, the Democratic leader. He went to see Senator Baker and the majority leader. I will never know the rules as well as you do, so I will make a deal with you. If you will not surprise me, I will not surprise you. Senator Byrd said: Let me think about it. The next morning he told Senator Baker he would do that.

The reason I mention those two Senators is because, before we get too mired down in our differences, let us think for a moment about what our goal ought to be. The goal for the Senate, to me, is to return the Senate to the way it operated during those 8 years when Senator Byrd and Senator Baker were the leaders of their parties. Four years Senator Byrd was the majority leader and 4 years Senator Baker was the majority leader.

I have talked to staff members, some of whom are still around. Senator MERKLEY's history goes back to Senator Hatfield in 1976, but I first came in and saw Senator Baker's legislative assistant, when there was only one legislative assistant per Senator. In 1977, I came back and spent 3 months with Senator Baker when he became the Republican leader, and I followed him pretty closely during the next 8 years. Here is the way it worked back then.

The majority leader—whether it was Senator Byrd or Senator Baker—would bring a bill to the floor. He would get the bill to the floor because Senators knew they were going to get to debate amendments to the bill. The Senator from Oregon is talking about no debates occurring today. Well, of course there are no debates, because when Republicans
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January 5, 2011

come down here with amendments, the majority leader doesn’t let us offer them. All those cloture motions he is talking about means the majority leader is cutting off my right to represent my people and offer an amendment in a debate as they are calling a filibuster a cutoff. It is not even a filibuster if the majority leader weren’t cutting off my right, which he has done more than the last six majority leaders combined.

But let’s get back to what our goal should be. My goal is to pass this bill to the floor unless the ranking minority, unless they had it, they wouldn’t move it along. There weren’t so many filibusters because the majority leader wasn’t cutting off everyone calling it a filibuster. This is a word trick is what this is.

I have talked to a lot of my friends on the Democratic side and a lot of Republican side and basically want the same thing. I think we want a Senate that works better. I think it is now a mere shadow of itself. I agree with Senator MERKLEY about that but not because of filibusters. It is because the majority leader is cutting off debate and calling it a filibuster.

The majority leader and the Republican leader I commend today because they have been talking about how we can do better. We all know that changing our behavior will be more lasting than changing the rules. I am glad Senators REID and MCCONNELL are working on this. They have asked Senator SCHUMER and me to work on it some more, and we are going to do that. We have had several meetings and we have another this afternoon and we will keep working. We will consider carefully these proposals or any others that come, and we will see if we can come to some agreement about how to move ahead.

My heartfelt plea is before we change the rules, let’s use the rules. Going down through the list of reform suggestions:

The motion to proceed—that is a difficult one for many of us because if you are in the minority the motion to proceed is your weapon to require the majority to give you amendments.

Secret holds—Senator WYDEN tells me he and Senator GRASSLEY have been working on that for 15 years. They have never give an amendment or even vote on it, but we are going to finish the bill. That is what the leaders did.

Sometimes there would be a piece of legislation that would come up where one side or the other wanted to kill it and so they would try to kill it. That’s just like we would do today, if Democrats were to bring up a bill to abolish the secret ballot in union elections. We would do everything we could to kill it. If the House passes a bill and brings it over to the Senate, I would hold up the bill, but Democrats are going to do everything they can to kill it. That is separate. But most of the time under the leadership of Senators BYRD and BAKER, the bill came to the floor, there was bipartisan cooperation, and there were amendments.

Why was there bipartisan cooperation? Because the leaders knew that unless they had it, they wouldn’t move an inch. Being good Senators, they wanted to do their jobs. In fact, Senator BAKER told us often that his Republican chairmen: Don’t even bring the bill to the floor unless the ranking member, the Democrat, is with you. So most of the time, you would have the Democrat and the Republican there together and they would allow amendments, would fight other amendments off, and they would get to a conclusion. There weren’t so many filibusters because the majority leader wasn’t cutting off, everyone calling it a filibuster. This is a word trick is what this is.

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care law or they can get rid of the secret ballot in union elections with a majority vote. If you turn this place into that, you just go bam, bam and it is done. The Senate is the place for us to say: Whoa, whoa, let’s see if we can get a consensus before we do anything.

What we have done not only get a better bill, but usually, the country accepts it better. The American people like to see us cooperating. They like to see us coming up with a tax bill or treaty or civil rights bill or a health care bill or a financial regulation bill, where we all have something in it. They feel better about that product. It is the check and the balance that is the genius of our system.

Obviously we can do some things better around here. I am committed to trying. I thank my friends for the amount of time and effort they have given. I am going to take everything they have said very seriously and in the spirit they have offered it. But I hope the solution is that we use the rules before we change the rules because this is the forum to protect minority rights, this is the forum to force a consensus, and we dare not lose that. We dare not lose that.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, I ask unanimous consent the Senate proceed to the immediate consideration of the bipartisan Wyden-Glassley-McCaskill-Grassley-Collins resolution to end secret holds, which is at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. ALEXANDER. Madam President, preserving the right to object, as I said earlier, Senator Wyden and Senator Grassley and Senator McCaskill and others have worked on this, some of them for as long as 15 years. They have made significant progress in gaining bipartisan support. I am going to object but only for the reason that this is one of the items we will be discussing and working on over the next few weeks with the hope that perhaps we can get agreement over here and agreement over there. It has been mentioned by all of the speakers today. It is a very serious proposal. But because we do not want to resolve it today, I object.

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

The Senator from Oregon.

Mr. WYDEN. Madam President, before he leaves the floor, let me thank Senator Alexander for the discussions he has had with me on this issue. Senator McConnell has also spoken with me about this. I wish we were getting this done today, largely because this would give us a chance on the first day of the Senate’s new session to send a message that once and for all we were deepening that we wanted public business ought to be done in public. I wish it were being done today but I understand completely the sentiments of the Senator from Tennessee and the fact that he is willing to work with me is something I appreciate.

As I have indicated, there are obviously significant differences between the parties about how to reform the rules of the Senate. The rules will be in place—certainly the very first day that the Senate comes back and is in a position to formally act, which appears to be January 24—is once and for all we would bring Democrats and Republicans together for an extraordinarily important change in the Senate procedures that Senator Glassley and I have been trying to change for literally 15 years. Particularly with the energy and enthusiasm Senator McConnell has brought to the cause, I think we are now on the cusp of being able to finally get this done.

It has been clear that if you walk up and down the Main Streets of this country, people do not know what a secret hold is. Probably a lot of people think it is a hairdryer. The fact of the matter is there are practically more versions of secret holds in the Senate than there are in pro wrestling. But what a secret hold is really all about, it is one of the most extraordinary ways of the Senate to operate. Suffice it to say it is getting worse. A few days ago, for example, Senator Merkley and I have been trying to get a piece of legislation that can involve billions of dollars, scores and scores of people, or a nomination with the ability to influence the lives of all Americans. One Senator can block that consideration without owning up to the fact that Senator is the one who is defying the public’s right to know about how Senate business is blocked.

That is wrong. It is not about how Republicans see it, or Democrats see it, it is about how the American people see it. It is about your colleagues coming to speak. But when you tell them that a Senator would be consequences. There may be a Senator around here who becomes known as “Senator Obstruction.” Senator Obstruction is the one who is trying to block public law. Let him explain it to the American people.

I will have more to say about it in a little bit, and there is the possibility of other colleagues coming to speak. But Senator McCaskill has brought the kind of energy and passion to this that has made it possible for us to, as I say, be on the cusp of finally forcing, here in the Senate, public business to be done in public. I thank her for all her help and will allow her to take the time she said she would speak for around 10 minutes. Senator Klobuchar, who has also been a great and passionate advocate of open government, will also speak, and for colleagues who have an interest we have 30 minutes of time.

I say to Senator McCaskill, with appreciation for all she has done, the time is hers.

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. McCaskill. Madam President, when I arrived in this Chamber 4 years ago at this time, I had no idea what the ways of the Senate were. I had an idea
Mr. WYDEN. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. How much time remains on our side?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. WYDEN. Madam President, I yield 5 minutes to the Senator from Minnesota.

Mr. BUCHANAN. I thank Senator Wyden for his leadership.

Madam President, as we begin the 112th Congress, I first congratulate my colleagues on how we ended the 111th Congress. We had an incredibly productive legislative session, working to keep our country moving forward in the face of deep economic challenges.

Now, I want to talk about how we can build on that momentum as we begin the 112th Congress. We need to continue working together to create jobs, support our middle class, and build a strong and prosperous economy.

As we work on a balanced budget plan, we need to consider the needs of working families and the importance of investing in our future. We need to work together to find common ground and build a consensus that will allow us to move forward.

Mr. WYDEN. Madam President, I yield the floor.
that my fellow Senators and my colleagues across the aisle will agree that it is time for change, that it is not time for business as usual.

We have heard from so many of my colleagues who have been working on this issue, like Senator Udall from New Mexico, Senator Merkley, Senator Harkin, Senator Wyden, Senator McCaskill, and also Senator Grassley, which is important work on the secret holds.

The elections on November 2 sent a message to every Member of Congress that the American people are not interested in partisan bickering or procedural backlogs or the gamesmanship and gridlock that prevents elected officials from doing their job. We were not hired by our constituents to hide behind outdated Senate rules as an excuse for not accomplishing things or not taking tough votes. That is just what the current Senate rules are allowing us to do.

I happen to be from Tennessee about how we should use the current rules. But the problem I have is that too many people have been abusing the current rules. First, as Senator Wyden, Senator McCaskill, Senator Grassley have so eloquently stated, we have to permanently end the practice known as secret holds, which basically allows one or two Members of the Senate to prevent nominations or legislation from reaching the Senate floor by driving themselves.

We thought we had this done, as Senator McCaskill pointed out, with the ethics bill we passed when we first came into this Chamber. But, unfortunately, once again, those rules were abused. There are some Senators who are playing games with the rules. They are following the letter but not the spirit of the reforms we adopted.

Look at the kind of secret holds we have seen, secret holds preventing the President from assembling the team he needs to run the executive branch. This summer, for example, secret holds were placed on two members of the Marine Mammal Commission for months. The Marine Mammal Commission—held secret in a hold while the Deepwater Horizon oilspill was continuing to play out in the gulf region.

A second example of what we have to get done is filibuster reform. It is a long-standing tradition in the Senate that a Senator can, if he or she chooses, hold the floor to explain objections to a bill. We think of Jimmy Stewart’s character, Jefferson Smith, in “Mr. Smith Goes to Washington,” as a shining example of how individual conscience can matter because an individual can stand on the Senate floor to the point of exhaustion in order to stymie a corrupt piece of legislation.

Well, that is not how the filibuster works in practice today. Today, an individual Senator virtually has the power to prevent legislation from being considered by merely threatening a filibuster. At that point, the majority leader must file a cloture motion in order to move to that piece of legislation. This adds a great deal of time to an already crowded Senate calendar. This is not governing. This is not how we do the people’s business. This is not how we come together to find practical solutions to our common problems. That is why we need to move forward.

To get to the real consequences of secret holds.

But when you look at the history of the Senate, it is all about tradition. As time goes forward, there have been changes to the Senate rules. Every few decades there are changes to the Senate rules. Given the number of instances where I have heard of lobbyists asking for secret holds, I wish to say that those who oppose our efforts to end secret holds are basically saying we ought to give lobbyists an extra tool, an extension of the tools they already have in order to advocate for their clients and defy public accountability.

We passed stricter ethics requirements with respect to lobbyists. But it looks to me to be the height of hypocrisy if the Senate adopts a variety of changes to curtail lobbying, as has been done in the past, and at the same time allows lobbyists to continue to benefit, as so many special interests have, from secret holds.

This is the opportunity, after a decade and a half, for the public to get a fair shake and for the public interest to come first. We have tried this in the past. We have tried this in the past with pledges and by passing a law and each time the supporters of secrecy found ways around it. But I think the public has caught on.

Suffice to say, there are going to be plenty of differences between Democrats and Republicans with respect to the rules of the Senate. What I think has come to light is, it doesn’t pass the smell test to keep arguments that Senate business ought to be done in secret. The American people don’t buy that anymore. They think this ought to be an open institution, a place where every Senator is held accountable.

This time it is going to be different. There are going to be public owners of any hold. There are going to be consequences for any Senator who tries to block a bill or a nomination in secret. This is going to be an important vote when we come back, a very important vote, and finally one that will require...
that public business in the Senate be done in public. I yield the floor.

**The PRESIDING OFFICER.** The Senator from Washington.

Mrs. HAGAN. Mr. President, I ask unanimous consent to speak as in morning business for 7 minutes.

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

(The remarks of Mrs. MURRAY and Mrs. HAGAN are printed in today's Record under "Morning Business.")

Mrs. HAGAN. Mr. President, I yield the floor and suggest the absence of a quorum.

**The PRESIDING OFFICER.** The clerk will call the roll.

**The legislative clerk proceeded to call the roll.**

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the order for the quorum call be readdressed.

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

Mr. UDALL of New Mexico. Mr. President, with the process we are in right now—and we have had questions back and forth on this whole issue of right now—and we have had questions objection, it is so ordered.

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

Mr. UDALL of New Mexico. Mr. President, with the process we are in right now—and we have had questions back and forth on this whole issue of Senator ALEXANDER because Senator ALEXANDER raised some questions, and some of those questions were not an- swered on our side. So I want to put in a couple responses here.

Senator ALEXANDER asked the question: What is a filibuster? He was asking our side. He was asking in this de-bate, what is a filibuster? Well, all of us know and we have heard in this de-bate what a true filibuster is. We saw a hero here on our side in terms of a true filibuster when it came to BERNIE SANDERS just a week or so ago, where he stood up for 8 hours to oppose a tax package on principle. He took the floor and he spoke and spoke passionately.

I say to Senator HARKIN, another ex- ample of a filibuster is from a movie the American public knows the best, a Jimmy Stewart movie, “Mr. Smith Goes to Washington.” Senator MERKLEY earlier had some charts on that, and he showed Mr. Smith on the floor, surrounded by other Senators, where he spoke until he collapsed.

Then you have the old-time tales of the Southern Democrats when civil rights legislation was being pushed in the 1950s and 1960s, when a number of what you would say were Northern Senators were pushing an anti-lynch- ing law because lynching was going on in the South. So they were trying to say you cannot do that, and Southern Senators would stand up—I think sometimes this record was in the range of 20 hours or 25 hours where they were completely exhausted from speaking on the floor.

So that is what the American public thinks about a filibuster.

Well, we know that is not what is happening here. I have been here for 2 years, and the only real filibuster I saw was the BERNIE SANDERS filibuster. I asked one of the historians, I think:

When was the last one? And they said: Well, you would go back to 1992 and Alfonse D’Amato, who took 12 hours to talk about an issue in New York that he was passionate about.

So when Senator ALEXANDER asked us, What is a filibuster, that is my de-scription of what a filibuster is.

But what I think the real question is—and I would like Senator ALEX- ANDER, when he returns, to answer this—is: What the threat of a filibuster had? What impact has the threat of a filibuster had? So people are probably asking: What are we talking about when we say: “the threat of a fili- buste”r”? Well, actually we have been talking about that all day.

First of all, it is the secret holds. As our Presiding Officer, who sits on the Judiciary Committee, knows, they work very hard in the Judiciary Com-mittee. They produce a bipartisan re-sult on these judicial nominations. These judicial nominations come out. They are put on the calendar. Then months and months and months later some of them get up for a vote.

I do not know about the exact number, but my understanding is that we had to send back to the President a number of judicial nominations that had received bipartisan support from the committee. We finished our business in December, and we sent those nominations back, only to have to have the President send them back down again because it is a new Congress. We are going to have to have hearings all over. This is the kind of situation we are in. About 10 specific cases of the threat of a filibuster. And we have these all the time.

One of the ones that is the most re-markable to me—and I am not going to pick out the Senator or the exact com- mittee—but, a number of us, actions. These judicial nominations come out. They are put on the calendar. Then months and months and months later some of them get up for a vote.

That is the threat of a filibuster. You may say: Well, how did that happen? What happens is, the legislation comes out of committee, and a Senator—or they do; a lot of us suspect after various things that have happened over time, but the Senator comes down and says, in a secret way to his leader: Well, if you bring any of those bills to the floor, I am going to filibuster!

That is what the threat of a fili- buster is. But that is an agreement that none of us knows about. So the threat of a filibuster has had an enor-mous impact on this institution.

Let me describe a couple of other things.

I talked about judicial nominations. As to executive nominations, I come from the era when my father was Sec- retary of the Interior. I was a kid. I re-member when he went into office. In visiting with him about that later, I said: We can’t get executive people in place. They don’t have their team. He told me in place in the first 2 weeks. So you are talking about the whole team for the Department of the Interior in the first 2 weeks.

I remember the Washington Post did an extensive study of the first year of the Obama administration. So imagine: President Obama takes office. He goes through a year, and he only had 55 per-cent of his executive nominations in place. So he only had 55 percent of his team.

Those of us who believe in government, believe that government does good things out there, find that appall-ing because we believe if you put peo-ple in place. They don’t have their team. He told me in place in the first 2 weeks. So you are talking about the whole team for the Department of the Interior in the first 2 weeks.

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would be very concerned about this one: We did not do a budget last year. The one way we can impact—if you talk about fiscal responsibility, and you talk about keeping the government under control, and guiding it in the right direction, the one thing you want to do is a budget. You want to pass a budget and set some outlines there.

Well, we did not do a budget last year because we were in a constant filibuster, the threat of a filibuster. And the story goes on and on.

So I say to Senator HARKIN, we are in the question phase right now. I am going to yield the floor. I am sure there is time still on the other side. But I think the question is not, as Senator ALEXANDER raised it, What is a filibuster? The real question out there—for when Senator ALEXANDER returns—is, What impact has the threat of a filibuster had on this institution we love of the Senate?

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. UDALL of New Mexico. The Presiding Officer, I hope the Senator from New Mexico will stay on the floor. I wish to engage in a colloquy with the Senator from New Mexico on the topic on which he just spoke. I say to my friend from New Mexico, the Senator from Tennessee, as I understand, had propounded the question, what is a filibuster? The Senator from New Mexico has been very eloquent in responding to that, talking about the filibuster. But I think the better question is, Why are we here?

Why don't we have 30 hours of the Senate's time, when nobody is even speaking and we already have the 60 votes for Patricia Smith? That is an example of what the filibuster has become. It has become a tool in order to slow everything done. For example, nominees. We had nominees who got through here on a 99-0 vote after being held up for 6 months. Well, what if, I ask, we have to file cloture on every nominee and then we have to file cloture on every nominee and then you have 30 more hours. If you did that on every nominee, I believe the majority leader said we would be here from January through August doing nothing every day of the week except nominations. How would we ever get anything else done?

The question is, What has the filibuster become? It has become a means whereby a few—this, I guess, would be Senator ALEXANDER—propound to my friend from New Mexico or at least suggest that he might respond. Has not the filibuster or the threat of a filibuster become a tool by which one or two or three or four Senators can absolutely slow down or stop things from coming to the Senate? Has not the filibuster become a tool by which one Senator who publicly announces that his goal is total gridlock of the Senate—total gridlock—has not the filibuster become a tool by which one Senator can impose gridlock on the Senate? Is that not what the filibuster has become?

Mr. UDALL of New Mexico. The Senator from Iowa makes an excellent point. One of the things that is remarkable about our Congress that deals with authorization bills—and Senator ALEXANDER came back and asked these questions—is, What is the Senate doing today? Are we going to do anything? Are we going to do any business, and they say they are going to do any oversight? And they say they are going to do any oversight. They talk about this—"We have the ability of the majority to govern. If you give the power to the minority to shut down the ability of the majority to govern. If you do that, you have rendered your democracy useless because then you get yourself into a situation, as the Senator from Iowa knows, where they can prevent the majority from doing anything and then run in a campaign and say: Well, they didn't do anything, whereas is kind of the apocryphal way to approach legislating.

One of the things that is remarkable to me—and I served over in the House of Representatives for 10 years and I didn't have to worry about every House bill the way it is written and we don't have to respond to every bill, but when you hear the fact that 400 House of Representatives bills in 2 years—the last session of Congress—were sent over here and we ended up—the young Members of the Senate were interested in some of these bills. We looked into them. We found out that these were on veterans issues and many were good bills. We found out they had to do with building the economy and economic growth and those kinds of things and that they were good bills. But we didn't have the time to act upon them. The way the filibuster is being utilized is to defeat our ability to move forward.

The one other area I wish to mention—and I know this is something that concerns our friends on the other side—if you are talking about making government responsible, fiscally responsible, doing oversight over government—and they say they are going to do all this oversight in the House—one of the best ways to do oversight is in an authorization bill. As everybody knows, we have an authorization process, and we have an appropriations process. Well, apparently now, with the studies being done at the Center for American Research—and Senator HARKIN would know this more than others because he serves on the Appropriations Committee—a major part of our appropriations are unauthorized now. I think the figure I saw was close to 40 percent unauthorized. So they say that they have authorized appropriations. It means the side of our Senate and the side of our Congress that deals with authorization, that is an oversight. You go in there in the authorization process and look at a revised program; How is this program functioning? Is this program effective, a good program, something that is working?
If the answers come back and you have evidence it is not working, you write in the authorization we are getting rid of that. If you don’t do any authorizations at all and the authorization doesn’t come to the Senate floor and all Senators don’t have an opportunity to participate, then you are giving up that kind of essential oversight. I would think they would be for that. Guess how many authorizations we did last year. How many? We did one. We did it at the very last minute as we went out. It wasn’t that we had some Defense Department authorization. That was held up with a filibuster because it had don’t ask, don’t tell in the bill.

So here we are at war—we have two wars going on. As Chairman Levin said, a lot of the things in that bill were to help the military do a better job and help the fighters on the ground in these two wars and we weren’t able to get them done at the start of the fiscal year and move forward. So we were able to do that. But before we left I was happy about that. How about intelligence and the huge agencies that run the health care programs and all those? We have not done that oversight.

To the Senator’s question what has the solution been? Sometimes it has become something pretty horrible in the history of the Senate. If we don’t fix this, we are going to be in a bad way. The way to fix it is the constitutional option. That is the wonderful thing about where we are today.

Today, we are in the first legislative day of the beginning of the 112th Congress. What everybody has told us on that first legislative day is that we can have all these rules proposals. The Senator from Iowa has one and Senator Merkley and myself have one and Senator Wyden. Guess what. If we round up 51 Senators—and they don’t have to be only Democrats—who say, No. 1, here are rules changes we want to make with 51 Senators, we can cut off debate with 51 Senators—and they don’t have to have all these rules proposals. The Senator from Texas, does that mean every bill?

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should add to that, during 2010, the Senate did not manage to pass a single appropriations bill. It is dysfunction on top of dysfunction. That is why we are here today.

I put back up the chart of Jimmy Stewart as well because I think at the heart of this conversation is a notion that, yes, every Senator should be able to hold forth, to share their idea, to advocate that in which they believe, to persuade their colleagues, but not to simply lodge an objection and walk away and never present their case before the American people.

Our good colleague from Tennessee said he wanted to see—how did he put it?—something to the effect of a “talking your heads off” form of filibuster, and he referred to Jimmy Stewart.

There is a sense of commonality in our views that if one is going to vote to continue debate, then the debate should carry our voices. That is simple—so the citizens can see if you have a case to make that makes sense, and they can weigh in and help turn the tide in the direction of the Senator, or that you have no case to make and they want you to sit down and have the Senate get on with its business. That is simple.

There are many ideas for much more radical steps—steps in which we would proceed to speak—yes, we will do something different. We will eliminate the filibuster. But that is not the proposal I am speaking to today. It is not the proposal to which many of us are speaking. We are saying, yes, you can keep speaking, but you have to speak. You cannot go on vacation. You cannot hide from the American people. You cannot object and hide. That is not in the tradition of the Senate.

There is a Wall Street Journal article that came out yesterday, and I am not sure if it was an editorial or an op-ed, so I will not attribute it to anyone specifically. But it said there is no chance for filibuster reform to address the filibuster problem. It said there is no chance for filibuster reform to address the filibuster problem.

I also want to publicly thank the Senator from New York for his leadership. I want to rephrase my question that I left hanging when I yielded the floor the last time. I see our great friend from New York is here to speak. I will not take more than a minute or two. I want to ask a question.

I asked the question: What has the filibuster become? And I further asked a question about consensus. If you do not get a consensus—that is, over 60 people—to agree on something, should then the majority not have the right to act? I want to rephrase that question and put it this way: If consensus—meaning over 60 Senators—if over 60 Senators cannot agree on something, then should the majority have the absolute total veto power over what the majority is proposing? That is the essence of it. If you cannot get a consensus, should the majority have the total, absolute power to determine the outcome?

That is what has happened in the Senate. That is what has become of this filibuster. The end result has become the fact that 41 Senators—if you do not have 60 Senators or more—41 Senators decide what we do, what we vote on, what comes before this body.

As the Presiding Officer knows, and as the Senator from Oregon for his leadership team, or that I left hanging when I yielded the floor the last time. I see our great friend from New York is here to speak. I will not take more than a minute or two. I want to ask a question.

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January 5, 2011

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not want to take my word for it, you do not have to go very far to listen to many impartial observers of the Congress who will tell you that it was exactly the case.

I rise today to add my voice to the growing number of my colleagues who are deeply concerned about the gridlock that at times has paralyzed our Chamber and prevented meaningful debate.

Many of us read with dismay an article by George Packer in the New Yorker magazine several months ago, which detailed examples of Senate dysfunction.

Americans from both political parties—and Independents as well—have asked whether the rules of the Senate are working to help solve these problems that face us. Some of my colleagues have understandably sought to change or eliminate the filibuster to make it easier to pass important legislation supported by a majority of Senators.

I come to this debate from a somewhat different perspective than my colleagues. I come to this debate with this guiding principle: that is, any attempt to limit the power of the minority by eliminating or weakening the ability to filibuster will simply lead to a further breakdown in what is already a fractured partisan relationship.

While I share much of the frustration expressed by many of our colleagues, I believe that we need to find a way to work together, are extremely serious.

No problem we face is more troubling or urgent than our economic future. Our unemployment rate is still above 9 percent, and it is much higher in some states. Our economic prospects than they were during the Great Depression. That is a very serious situation.

On top of those grim statistics, we face a massive budget deficit and a crippling debt that not only threaten our long-term economic stability but darken the horizon in a way that dismays and weakens the ability to invest and innovation that we need to spur American job creation today.

Moreover, our apparent inability to squarely address the problem in a partisan way is a signal to the American people—as if they need further proof—that their institutions of government are not working. And that, in my opinion, is as dangerous as any attack on our country.

Many have remarked that it is past time to have a serious discussion about how to turn our economic situation around. I have faith we can do that, but only if we are able to set aside the ideological differences that have side-tracked our politics, and frankly our policymaking, up to now.

We can't reach the level of bipartisan cooperation we need in this body if we prevent substantive debate and cut off the rights of the minority. But neither can we make necessary progress if Members of the Senate continue to be able to use technical loopholes and procedural gymnastics to hijack the Senate—literally—for days and, in some cases, weeks or months.

That is why today's debate—so ably led by colleagues from across the country—is more than just an esoteric debate about the Senate's rules. It is a critical turning point, and it is why today's resolution which I believe can help reduce the opportunity for gridlock while also encouraging both sides to work together on the most important issues we face in our Nation.

I developed this proposal after listening and talking with experts on Senate procedure from both sides of the aisle, including the noted congressional scholar Norm Ornstein of the Conservative American Enterprise Institute.

In a nutshell, I propose that by eliminating unnecessary opportunities for delay—without making changes that would jam through legislation at the expense of the minority party—we can improve the way the Senate works and make it more effective and fairer for the American people.

If I might, I want to make a couple of comments on some of the specifics of what I am proposing, similar to what the Senators from Oregon, New Mexico, Iowa, and others have put on the table.

I would first level the playing fields between the majority and the minority on cloture votes and require Senators actually vote in opposition to the bill they wish to filibuster. Currently, cloture is invoked when three-fifths of the Chamber votes yes, so staying home is the same as voting no, and Members can simply threaten to filibuster and skip town with no recourse.

My proposal would require that Senators show up, debate, and actually vote against a bill if they are conducting a filibuster, by changing the rules to invoke cloture not on three-fifths of the Chamber but invoking cloture when three-fifths of those voting to end debate actually have a meaningful discussion. If Members don't show, the threshold is lowered accordingly—three-fifths of 90 is 54 votes to end debate, three-fifths of 80 is 48 votes to cut off a filibuster, and so on.

Second, I would reduce the number of votes required in debate on a single bill. The Senate rules now allow for a filibuster on a motion to proceed to a bill, a substitute amendment to a bill, final passage after we have already overcome a filibuster on the exact same text—and the list continues.

There are three separate opportunities to filibuster before sending a bill to a conference committee. My proposal would eliminate all these opportunities to filibuster except for final passage.

Third, I would shorten the timeframe required to invoke cloture. I would propose we vote 24 hours after cloture is filed, instead of waiting 2 days, as is required today. I would also allow the 30 hours of postcloture debate to be split between the parties, to avoid needless delays. In total, we could shorten the time required for cloture by nearly 40 hours for a single bill.

Fourth, I would end the requirement that amendments be read in their entirety if they have been made available on line at least 24 hours in advance.

Fifth, I would end the requirement that Senate committees seek consent to meet.

Sixth, after I propose that we change the rules to move more quickly on judicial nominations—allowing a final vote immediately after cloture is invoked on a nomination.

Finally, I would provide a way to call up an amendment when a majority leader has filled the amendment tree.

The Senate is famous for great debates and a free amendment process. But in recent years the process of presenting amendments has frequently been shut off by the majority party. So my proposal would, on a limited basis, give Senators the opportunity to present their amendments when they are otherwise being blocked from doing so.

The Senate has been called the world's greatest deliberative body. But what happens if we don't deliberate? I am afraid we risk turning the Senate into an extension of the 24-hour political spin cycle, which seeks to separate us rather than allowing us to work out solutions to the problems we face.

Every day, proud Americans come to our Capitol hoping to watch debates such as those of years past. Many are increasingly dismayed to see a small number of Senators, such as those here today, debating among themselves in an empty Chamber. We don't even require Senators to attend their own filibusters—no 'Mr. Smith Goes to Washington' no actual debate.

I want the Senate to work the way Americans envision it does—where Members discuss their differences, cooperate, vote on amendments, and improve legislation for the good of the country.

With that in mind, I hope our colleagues will join me to seize the opportunity we have before us. Let's work
together to improve the way the Senate operates. I want to extend my hand to the Republicans to ask for ideas in how we can improve the way the Senate operates. I want to work with anybody, as I think all my colleagues do, to solve these problems in front of us. We have a responsibility to work together to bring about the cooperation and the problem solving Americans expect and deserve.

Mr. President, I appreciate your attention and appreciate the important work all my colleagues have undertaken, and I look forward to working with the 99 other Members of the Senate to make the Senate a Senate we know and love and believe is the greatest deliberative body in the world.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I wish to talk a little about the issue we have been discussing, and first let me congratulate my colleagues who have been on the floor on this issue, particularly the Senator from New Mexico, Senator UDALL; the Senator from Oregon, Senator MERKLEY; the Senator from Colorado, Senator UDALL; and the Senator from Iowa, Senator HARKIN; and many others who have participated in this debate. They have done a great job today.

The other thing I think I appreciated—and Senator HARKIN helped do this—is there was not just debate, there was actual discussion, even when we didn’t agree. I thought it was pretty interesting watching on the TV in my office when Senator Robb’s came and stood by a desk here on the Democratic side, a desk away from Senator HARKIN, and they didn’t agree on the issues that they debated the issues. What a great first-step metaphor for the kind of debates we want to have here on the Senate floor. So this has been a very positive and hopefully prescriptive opening of the debate to change the rules because we all know that in the last Congress the Senate didn’t function effectively and the time for change has come. I want to salute the leaders, as well as Senator Klobuchar, Senator Franken, Senator Lautenberg, and so many others, who have been so involved in our discussion and for the work they have done.

I also want to say to my colleagues this is not that has just happened recently. This idea that all of a sudden this has popped up in the Senate is wrong. Last year, the Rules Committee—and I was urged by Senator Udall to do this among the first days of the session 2 years ago, and I think we did a pretty extensive and good job—held six hearings that examined the history of the filibuster, trends in the use of the filibuster, secret holds, stalled nominations, and proposals for change. In those hearings, we heard from both parties and both partisans and people have valuable ideas about the need to reform the filibuster. Senators Harkin, Lautenberg, Wyden, Grassley, Udall, Udall, McCaskill, Gregg, and Bennet all testified at the hearings. We also brought former Senators of both parties, scholars, and former Senate staff of both parties to come and testify.

In the first half of the 20th century, filibusters and filibuster threats were relatively rare events. That has been documented already, and our hearings documented it extensively. But since that time, the number has continued to dramatically increase. When you face cloture motions per week—which is what has happened currently—then we know there is a problem, and it is no mystery that the Senate has been labeled as “dysfunctional.”

Between 1917 and 1971, there was an average of one cloture motion filed per year. In the 110th and 111th, we had more than 70 cloture motions. These cloture motion counts are a response to the filibuster, and it is distorting the way the Senate operates.

For the legislative branch, hundreds of bills passed by the House in the 111th Congress were not considered, even though they had passed the House by voice vote or with a majority of House Republicans voting yes. The Senate is supposed to be a cooling saucer, not an ice box.

In the executive branch and the judiciary, dozens of judicial appointments were delayed or blocked from floor consideration after cloture votes in the last Congress. Many of these were approved unanimously by both Democrats and Republicans in committee, yet sat on the Executive Calendar for months because of secret holds. This is dangerous at a time when we need a Federal Government using all its resources to fight terrorism, protect our country, and address our economic needs.

I salute Senators Wyden, McCaskill, and Grassley for focusing our attention on this issue. It is important to end anonymous or secret holds and shine some light on the kinds of long-term delays that can hold up a nomination or a bill for weeks or months or even longer.

Also, during the fiscal year 2010, half of all nondefense spending—$290 billion—was appropriated without legal authority because Congress hadn’t reauthorized the programs. The unprecedentedness of that even in the actual use of the filibuster—has prevented debate with such frequency that extended deliberation is a dying commodity. Make no mistake about it, the everyday threat of the filibuster does not ensure debate, it restricts it.

Reforming the rules in a thoughtful way would clear the way for more legislative activity. If they want to debate, if they want to move forward and not play parliamentary games. The American people deserve better of their elected officials than what the Senate has been giving them. Governing is not a game of parliamentary chess.

The majority will not choose to waste floor time on a matter the majority is committed to stop. But will
the minority choose to filibuster every single piece of legislation if actual debate is required? I don’t think so.

That would apply whether Republicans are in the majority or Democrats are in the majority.

In addition to other worthy options proposed for reform, I think this proposal is strong because it allows the minority the same ability to debate and block legislation—so long as they actually debate. If there is no actual debate, then no filibuster, and the Senate can proceed to do its business for the American people.

I believe this modest proposal is one on which both Democrats and Republicans should agree. It could be a point of bipartisan agreement, and I will present it in the bipartisan negotiations happening over the next few weeks.

Of course there are other good-faith proposals that my colleagues have put forward. Many of them are thoughtful. Most would represent meaningful change without altering in a too jarring way the rules of this institution. Nobody wants us to become the House of Representatives. Everyone understands that we should not rule simply by majority vote on every issue. However, we can pull the curtain back and make sure that when people say they want more debate, they debate.

In the next 2 weeks, we should look at these proposals—all of them. During the recess, we need to talk to each other. Democrats and Republicans, about genuine ways to reform this body, to restore the Senate to its traditional role as the world’s greatest deliberative body, and to do so in a way that encourages full and open debate—both for the majority which proposes and for the minority which wishes to modify what the majority proposes.

I believe we owe it to the American people to reform the Senate so it functions in a way that best represents their interests.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, first, let me thank the Senator from New York for his very distinguished leadership of the Rules Committee and for the very open and thorough way in which he engaged that committee on these pressing the filibuster and problems that have been caused by its current abuse on the Senate floor. Let me also thank Senators UDALL and MERKLEY, who worked so hard to organize this and who have put together what I think is a very good proposal.

At the outset of my remarks, I ask unanimous consent that I be added as a cosponsor to the rules resolution that is here, at this point.

The PRESIDING OFFICER. Without objection, as is asked for.

Mr. WHITEHOUSE. The distinguished Senator from Oregon, Mr. MERKLEY, showed a photograph a little while ago of Jimmy Stewart in “Mr. Smith Goes to Washington.” That has become the sort of emblematic, signature demonstration of the American Senate filibuster.

There is a scene in that movie that I am sure the Senator is familiar with. Where Jimmy Stewart has to talk his head off in the cloakroom for the minority to force the Senate to be productive while also allowing the majority to force that 30-hour period to run. If you stacked up dozens and dozens of 30-hour periods, what you do is you take up the entire time available to the Senate and you impede this institution in its ability to get its work done.

That is what is at stake right now. That is why I think it is so important that the changes we are recommending restore the Senate to the traditional filibuster. We do it in two ways. First of all, if these rule changes pass, you will not get to filibuster the bill, proceed to the bill and then get to filibuster all over again on the bill and double the filibuster. If you really care about the bill, if you are really opposed to the bill, if you really hate the bill, you cannot come and talk for 30 hours, but you don’t get to do it twice—once on a pure parliamentary measure. That will cut down some of the wasted time, some of these droning hours that you see on C-SPAN. What is happening in the Senate and the time being wasted, locked in the filibuster.

There is another rules change that I believe is important. The 30-hour period is called the period for debate. What our rule change would do is, when the debate stops, the 30-hour period stops. Whoever is presiding would simply note that there is no longer debate and would call the vote. You can still debate the whole 30 hours if you want to come here and talk, but when the talking stops, you vote. You are not in a position where you can commandeer 30 hours of Senate time, force the Senate into quorum calls, and defend against going to the vote with one Senator, one Senator cloakroom, able to come out and object whenever the majority tries to move the Senate to a vote and get the Senate back in its business again.

There are two simple repairs to the cloture rule that will make it less of a prize for the minority, that will prevent us from spending all these 30-hour increments droning away in 30-hour filibuster quorum calls, and put the Senate back to where it should be—the great chamber of debate where people actually have to come to the floor, say their piece, and when they are done, we go on to the next piece of work.

I commend everybody who has worked on this, I think this is a very valuable step we are taking. I don’t think it is a change away from the traditions of the Senate; I see it as returning to the real traditions of the Senate, of real debate, not just wasting time for its own sake, but the Senate to be productive while also allowing Members who have opposition to a bill to state it as forthrightly as they wish, to engage in, as the reporter said in “Mr. Smith Goes to Washington,” democracy’s finest show, the right to talk your head off, the American privilege of free speech in its most dramatic form.
I thank all Senators present for entertaining my thoughts.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. First, I wish to say I am so pleased to be with colleagues who are standing up for activity on behalf of the citizens, the constituents we represent, to get things done.

I doubt many of us would be happy with a report card we got in either high school or college or whatever education we got beyond that—I doubt we would be proud of any report card that resembles that which we have obtained in this facility, in this great house of debate, in this distinguished body of legislators, one of the most prominent—the most prominent—let me qualify that—legislative body across the world and the envy of so many who think the United States is still one great country.

We want to do the right thing. But here what has happened, we find ourselves in a morass of dilatory activities, things that do nothing but stop progress, is the mistake we see. I congratulate my colleagues who have taken hold here to make sure we do whatever we can to change the facility.

I have here my picture of Jimmy Stewart, "Mr. Smith." While I am not anxious to admit it, I do, I remember seeing the picture. We need not discuss the precise date, but it was some time ago when I saw this, and it left a vivid impression in my mind. But I cannot tell you what it was about, except that he was one trooper, that he stood on his feet, so many hours it is hard to understand how the body responded to the opportunity, trying to clean things up.

The date of the film was somewhere around the end of the 1930s, 1939, most likely. That was not the exact date, but in that vicinity. Even then, they were discussing what could be done to move things along and how the kind of effort he gave as Mr. Smith was required to honor the people, the responsibility he had to the people.

So we know what kind of report card the legislators here and in the House have gotten from the American people because they are sick and tired of seeing all this empty space, listening to words I could describe more in the vernacular as gobbledygook-gook, not understanding what is going on but knowing very well that nothing is happening that is benefiting them.

So when we see this low public opinion from Americans all across the country, it is because they do not believe we are getting things done that they sent us here for. Each one of us who has been elected. I do not care how popular or how remote, the fact is you had to work hard to get elected and so proud—and I look today, as I saw person after person hold up their hand to take the oath. I have done it five times here and each time was a thrill. Even as I watched colleagues walk up there and heard their names called and saw them raise their hand, and to feel the pride they felt, I do not care Republican or Democrat, to feel the pride they felt, to be able to take this job on their hands, to get the support of the public in their States, enough to win an election, and then we show the public a lack of activity.

We have had enough discussions, speeches made earlier, good ones, describing the number of times the filibuster has been used. If I might ask the majority whip, is it the record number of filibusters ever in the history of the Senate? The Senator from Illinois confirms that. Here we are, and the need has never been greater to get something done to let the American people know their government is there to help them through a crisis, to help them regain their jobs and regain their pride in themselves.

Make no mistake about it; the absence of progress in the Senate promotes bitterness and anger among the American people. Make no mistake; an empty Senate chamber is no way to respond to the people. All too often this is what happened because the minority now has simply been abusing Senate rules. They can do it. But it is an abuse of the process.

Last year we were locked in a constant struggle withiless Americans. Several times we attempted to bring legislation to the floor to extend unemployment benefits for millions of people who had no other source of income, who were in jeopardy of losing their homes and losing their opportunity to care for their families and being personally humiliated and disgraced about that and we could not get an agreement to pass an unemployment benefits bill until it was included with other legislation that had to pass.

Back in June, 59 Senators wanted to restore aid for those workers who had gone without income for weeks. Our colleagues on the other side of the aisle objected and delayed the vote, then left town for a week-long break. By the way, I keep on reminding those hearing me that this is under the guise of a filibuster, a legal process that is permitted by the Senate rules to be engaged in when there is a disagreement about a piece of legislation or a process that has to be passed.

We left more than 1 million Americans in limbo for several agonizing weeks. Our opponents said they were simply filibustering the bill. In other words, they wanted to talk more about the substance. But they did not want to talk about the substance. They did not want the public to hear the truth about their views. But they did not even want to talk on the floor. They just left the Senate empty and silent.

This is why I introduced my "Mr. Smith" bill. I brought this up initially last March. It is almost a year now since I brought Mr. Smith back to this Chamber. As we know, the legislation is named for Jimmy Stewart's character in the classic movie, "Mr. Smith Goes to Washington." Frankly, we now look, the names are different, the mission is the same. There are those who want to make progress and those who want to do nothing more than delay progress.

As I said earlier, Mr. Smith wanted to make a point, spoke for 23 hours. These days, Senate to the proceeding, walk away, and leave an empty Chamber behind. How are we supposed to create jobs in an empty Chamber? How are we supposed to increase educational opportunities in an empty Chamber? Are we supposed to help keep people in their homes in an empty Chamber?

The "Mr. Smith" Act will bring deliberations back to purportedly the world's greatest deliberative body. It out of the Army and we suffer a lack of transparency and Senators more accountable. Members of this body will no longer be able, if we pass this rule change, to be able to launch a filibuster and then skip town, leaving the Senate in a state of paralysis.

If you have the courage, stand and explain to the American people why you are objecting to things that can help the average family. This is still a republic. Yes, there are a lot of people at the top making lots and lots of money. We have seen it in the newspapers. We have seen the list of billionaires who make that much money in a single year. But we do not see the same panoply of people who are forlorn because they cannot help themselves, and they look to the government to be there with them.

I know from personal experience that my life changed radically when I got through with training and the GI bill. My father died after I enlisted. My mother was a 37-year-old widow. My father was sick for 13 months with cancer. At the time, there were not the products that make pain less acute or that provide more help for recovery it was not there.

So we had not only the loss of a father—I had joined the Army. When I was 18 years old, I enlisted—we had bills and bankruptcy and life was miserable. The GI bill made the difference in my life. I was able to join two other people in my home city, friends of mine, in creating a company, three of us.

Now it employs 45,000 people. The company is called Automatic Data Processing, better known as ADP, because I got help when we desperately needed it, when my family and I could never think about my going to college. I was able to go to college. ADP is a company that is providing something, something so far out of sight I never dreamed it was possible. But it was there. There are times when people across the country say to our leadership: Please, give us a chance. Give us a chance to stay in our home. Give us a chance to educate my son and my daughter. They can learn. We do not have the money.

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So we had not only the loss of a father—I had joined the Army. When I was 18 years old, I enlisted—we had bills and bankruptcy and life was miserable. The GI bill made the difference in my life. I was able to join two other people in my home city, friends of mine, in creating a company, three of us.

Now it employs 45,000 people. The company is called Automatic Data Processing, better known as ADP, because I got help when we desperately needed it, when my family and I could never think about my going to college. I was able to go to college. ADP is a company that is providing something, something so far out of sight I never dreamed it was possible. But it was there. There are times when people across the country say to our leadership: Please, give us a chance. Give us a chance to stay in our home. Give us a chance to educate my son and my daughter. They can learn. We do not have the money.
Make sure health care is available, that no matter what your condition of being is, you cannot be precluded from getting insurance. That is what is proposed in the health care bill that right now is in danger of being repealed, if the House takes the action as purported.

So what we are talking about, to summarize, is that we have to get busy and show the people across the country that this is not just a ring for showing how clever a speech can be or cut an idea at midnight, when all that is being done is stopping progress. Progress. They object to bills being even moved along so they can be considered—anything they can do to obstruct movement.

So we may be unable to bring Mr. Smith back, but we can write real accountability for filibusters and for the sake of a functioning democracy—more than a functioning democracy, a degree of dignity and hope for people who have been hurt by an unemployment record never before seen in the country, with the number of people out of work in the millions and more, and they say: Mr. Senator, help us. Be there to help us now. We are not looking for charity. We are after a hand that will get us started, get this economy going. We owe it to them.

I say to those who want to obstruct it, be brave enough to stand and tell the people here or the people on television who really want to know about what we are doing, tell them why it is you are objecting, and then we will restore a degree of confidence in those who serve here, those who work so hard to be elected, and those who can represent the people well.

But we cannot sit in silence, just wasting time. I hope we will come to our senses, make the changes in the rules that will stop the filibuster from being a guise for inaction.

I yield the floor.

The PRESIDING OFFICER (Mr. MERKLEY.) The Senator from Illinois.

Mr. DURBIN. Mr. President, I rise to speak to the issue which has been considered on the floor today by my colleagues. I thank, especially, the Senators from Utah, Oregon, and Colorado, as well as many others, for their leadership in discussing the procedures of the Senate.

When I went home over the break, I spent the time back in Illinois with my wife in my hometown of Springfield and a lot of time around the house and a lot of things had to be considered. I left the decisions of war and peace behind in Washington, DC, and went home to face the real decisions: Are we going to change our cable TV service? Are we paying too much for the Internet? Things that my wife finally put in front of me and said: We need some decisions here.

As I pondered those weighty decisions, particularly when it came to cable television and what we would receive in Springfield, I could not help but reflect on the fact that, similar to many Americans, we like to have C-SPAN so we can follow the House and Senate.

You may know in West Virginia, as I know in Illinois, there are people who are obviously suffering from insomnia who spend a lot of time and find it very restful and sleep inducing. If they watch the Senate, it is something else. It is not only sleep inducing because of so little activity on the floor of the Senate, it is, in fact, an unfair exercise to something. There is no debate—there is no airing a cable TV bill for C-SPAN covering the Senate when we do so little. They ought to get a refund. Families across America are entitled to a refund if they tune in to C-SPAN, Senate version, and watch us day after day, with our delightful and talented staff people slowly reading the quorum call and names of the Senators. That is it. If you have watched C-SPAN in the Senate for the last seven or eight years, you will see that more often than not, a lot of people say to me: Senator, why is not anything going on in the Senate? When you talk in the Senate, why isn’t anybody there? Basic questions an average person might ask. They reflect on what has happened to the Senate. We are here tonight to do something. We are going to change the Senate.

So what we are talking about, to conclude, is that we have to get busy and show the people across the country that we will value and honor the debate, that we should make sure the Senate that we should value and honor the debate that we have today.

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of what he was elected to the House to do. He used to stand up in the caucuses of House Democrats when they would be whining and crying over the thought of facing a controversial vote and say to them: What is wrong with you people? If you don't want to fight on a majority vote, don't become a firefighter. If you don't want to cast controversial votes, don't run for the House of Representatives or, in this case, the Senate.

I think the same is true today. Although my colleagues face tough election campaigns in tougher States than my home State of Illinois, the fact is, coming here and casting tough and even controversial votes is part of why we were elected and why the people expect us to come and face the music on difficult issues.

Bringing debate back to the floor, bringing more votes to the floor certainly is a move in the right direction. I say to the Senators from New Mexico, Oregon, California that their proposal that would allow germane amendments as part of the regular order of the Senate is a move in the right direction. That way the minority and majority get an opportunity to amend a bill. Can it be abused? It can. But the taking away of the very relevant amendments makes a difference.

I can recall one colleague on the other side of the aisle who kept coming to the floor repeatedly, day after day and week after week, to offer the same amendment over, even when he was passing the amendment. Sometimes he would pass it; sometimes he wouldn't. But he couldn't help himself. He just had to keep offering it over and over. As he offered this amendment, it didn't enhance the bill. It didn't enhance the debate. It gave him a chance to put out a press release.

One can abuse that process. So making sure the amendments are limited to those that are relevant certainly is a reasonable thing to do.

Let me say a word about the 60-vote margin. The 60-vote margin, as former Vice President Mondale wrote in his guest column recently—I believe, in the Washington Post—was a compromise. In days gone by it took 67 votes to end a filibuster, to bring closure. Then in the 1970s, Vice President Mondale, then a Senator, joined with others on a bipartisan basis and lowered that to 60 votes. But it was still a rare thing to do, to bring a filibuster and need a cloture vote of 60 votes. Unfortunately, that 60-vote standard has been corrupted into a new standard for passage of legislation.

Allow me to give two examples. We considered a Wall Street reform bill. There were dozens of amendments offered. The Senator from Oregon had a controversial amendment and waited for days, maybe weeks, for a chance for his day on the floor of the Senate. After about 25 amendments had been offered to the Wall Street reform bill with a standard of a majority vote, I had an amendment relative to interchange fees on debit cards, a controversial amendment. Credit card companies and big banks hated it.

At that point the announcement was made unilaterally, incidentally, the Durbin amendment would require 60 votes. Everything else had been a majority vote to that point. There was no way for me to challenge that. If I wanted my amendment to come to the floor, I had to accept a higher margin to pass it than all the other amendments that had preceded it.

Why? Because the threat of a filibuster was there, a filibuster against my amendment. That threat alone raised the margin and standard for that vote to 60. From the other side's point of view, many of whom opposed my amendment, it is a pretty easy thing to start a filibuster if you don't have to engage personally or make a personal commitment to it. They don't have to notify the Senate or bring it up for a vote. It became the requirement. Fortunately for me, I had 64 votes and passed it.

The same is not true of another provision which means an awful lot to me, the DREAM Act. The DREAM Act is a reform of our immigration laws that is long overdue for children brought to the United States who are asking for a chance to become legal. They can do it through military service or by education, achieving at least 2 years of college. I have tried for 10 years to pass this measure and repeatedly have had majority support on the floor of the Senate. It has been ruled not enough. You need 60 if you are going to pass the DREAM Act. For the other side, we had it considered again. It failed by not reaching 60 votes but had 55 votes. So the fact is, establishing this new 60-vote margin has become too common place for anything that anyone wants to amend a bill that might require a filibuster. That has to change. Sixty-vote requirements should be rare in this body. They should be used sparingly, and they should not be applied on a daily basis. They should be applied to any amendment or bill that I or any other Senator at any given moment objects to.

Let me also say when it came to unemployment insurance, I had a little debate with the former Senator from Kentucky, Jim Bunning, now retired, and insisted that he stay on the floor as I repeatedly asked for unanimous consent to extend unemployment benefits. Some Republicans came to the floor and said to remember when you asked the Senator from Kentucky to stay on the floor so that he could object to my unanimous consent requests, I am sorry. There were millions of Americans who were not receiving unemployment benefits. It was not unfair to ask the Senator from Kentucky to stay on the floor so that he could object to my unanimous consent requests. I am sorry. There were millions of Americans who were not receiving unemployment benefits. It was not unfair to ask the Senator who is objecting to those benefits: Stick around, miss that basketball game you want to see tonight, which he had announced on the floor. Stick around and suffer a little bit more because you still believe that is the right thing to do.

Eventually, after a matter of days, unemployment benefits were extended.

But the point I am getting to is that we have reached a point here that is way beyond the protection of the minority. It is the protection of what I consider to be an indolent approach to the Senate where we want the easiest way around things, we don't want to debate them. We don't want to vote on them. We don't want to face a majority vote that we might lose. So we have contrived a new set of standards, procedures, and rules that are addressing part of this reform conversation.

Many times when Senators file a cloture motion or an objection that is noted by their side of the aisle and then the clock starts running, the 30 hours, before there is a vote, many times those Senators leave. Before the Senator from Oregon arrived in this body there was one Senator who objected to our moving to a measure, and then he walked out. He didn't have the commitment to stay for the vote that he demanded while he went off to a family social obligation. That is not right.

The good part of the rules changes that are being discussed now would require Senators like that Senator, if they believe the business of the Senate should stop or be delayed, to invest themselves personally in the conversation—to be here. Is that too much to ask? The Senator from Pennsylvania once said: Earn it and own it. If you believe the business of the Senate should come to a halt for 30 hours, then for goodness' sake have at least the decency and the personal commitment to park yourself at your desk and argue your point of view. If you are too tired to do it or too distracted or can think of something better to do with your time, be my guest and walk through the doors and let the Senate proceed with its business. But if it is important enough for you to stop the business of the Senate, I happen to agree with those who are calling for rules reforms; we should have that change.

We should make those who are involved in it stay and invest their time, their personal commitment to that undertaking.

Finally, the nomination process has been corrupted to a point I don't even want to talk about. When Coburn chastises the Senate for all of the judicial vacancies in America, I know what he is talking about. In my home district of Illinois, the central district, in normal times there are four district court vacancies, in three district court vacancies. One judge, Mike McCuskey, is running all over downstate Illinois from courthouse to courthouse to try to keep the criminal calendar going. I am afraid he has little or no time for the United States who are asking for a decision which means an awful lot to me, the United States who are asking for a vote that has been considered again. It failed by not reaching 60 votes but had 55 votes.

So the fact is, establishing this new 60-vote margin has become too common place for anything that anyone wants to amend a bill that might require a filibuster. That has to change. Sixty-vote requirements should be rare in this body. They should be used sparingly, and they should not be applied on a daily basis. They should be applied to any amendment or bill that I or any other Senator at any given moment objects to.

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were considered by the Senate Judiciary Committee, reported unanimously by the Senate Judiciary Committee to the Executive Calendar, and I literally begged the Republican side of the aisle and leadership to allow these two to come to a voice vote since there was no controversy attached with them and a judicial emergency existed in that central Illinois district. They refused. They refused, despite repeated efforts.

I then went to the other side and said: All right, you must have Republican Senators facing the same thing in their States. I found Senator CORNYN of Texas, with exactly the same circumstance. I said: John, you have a noncontroversial nominee. Let’s team up together, make it bipartisan so there is no question that we are trying to do anything for a partisan advantage. He said: I am with you. It was not enough.

The Republican leadership still objected to filling these vacancies when a judicial emergency existed. I tried, although I asked for it repeatedly. That to me is an abuse of the process. If either of those nominees had been controversial, if this was a situation where it was a new, extra judge, some question—then a judicial emergency had still been needed. That is another story completely. But we need a nomination process where those who are not controversial are brought up and considered in a timely fashion.

I commend my colleagues because I think every one of them has added to this conversation—Senators WYDEN, GRASSLEY, and McCASKILL, on a bipartisan basis, to do away with Senate holds. Senator UDALL of New Mexico, Senator HARKIN of Iowa, and Senator MERKLEY of Oregon, who is now presiding, I think have had an excellent proposal here of five different changes that would make this a more effective Senate. Senator LAUTENBERG, who spoke just moments ago, had his own proposal. Senator UDALL of Colorado and Senator HARKIN each have a proposal.

It is time for us to sit down on a bipartisan basis to protect the rights of the minority within the Senate, but to bring the Senate procedure into a more efficient and more effective way, not just so C-SPAN viewers are not short-changed when they sign up for C-SPAN Senate and all they get is an occasional “Akkaka” or some other name being listed in the quorum call, but actually hear the Senate working for its money.

We can do better. I know what is going to happen now. We are likely to recess for some period of time, and an opportunity presents itself for the leaders on both sides to come together. There is room for us to reach agreement. We can say to the minority: You are going to get your chance for amendments. You always want that. You are going to get it. And we can say to our friends: You are going to face the same votes on amendments, like it or not. That is part of why we are here. We can have some real debate. We can have an investment in the cloture process that means it is real and personal, and that those who believe in it are taking the time to make sure the Senate continues to function as a responsible part of our government.

Mr. President, at this point I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL of New Mexico. Mr. President, I think each and every one of them has a nomination process where those who have done trying to lead us in these difficult times we are in. It must be tough for somebody like him, who came to a Senate and saw it change over time, and change in the wrong way and get hyperpartisan. I want to say that to the Senator.

I also want to say several of our speakers mentioned things, and I think it is very appropriate to put them in the Record because I think when people read the CONGRESSIONAL RECORD, and things are mentioned, it is important they be able to find them quickly.

So the first one is from George Pack-
er, who is a writer with the New York-

Secondly, one of the big scholars on Congress—there are a couple of people out there who study Congress over and over and write books and articles and monitor what we are doing, and one of them is a gentleman by the name of Norman Ornstein. Norman wrote a piece called “The Empty Chamber” dated August 9, 2010. I commend to my colleagues that article. It was mentioned in the course of the debate and it is an excellent article. He is a very good writer.

The President pro tempore of the Senate, he is a writer with the New York-

Today's debate by one of the Senators—and Norm Ornstein. Norm wrote—this was an article. He is a very good writer.

And part of the problem lies with changes in Senate rules that allowed for 30 more hours of debate. As a result, the bill—with its des-

But the biggest factor is the nature of the filibuster itself. Senate rules put the onus on the majority for ending a debate, regardless of how frivolous the filibuster

If the majority leader wants to end a debate, he or she first calls for unanimous consent for cloture, basically a voice vote from all Senators present in the chamber. But if even one member of the filibustering minority is present to object to the motion, the majority leader has to hold a roll call vote. In the current Congress there have been 117—more than two a week.

Even though there might be several motions for cloture for each filibuster, there clearly has been a remarkable increase in the use of what is meant to be the Congressional equivalent of a nuclear weapon.

Filibusters aren’t just more numerous; they are more mundane. For example, an earlier bill to extend unemployment benefits, passed in late 2009. It faced two filibusters—despite bipartisan backing and its eventual passage by a 98-0 margin. It should have zippered through in a few days took four weeks, including seven days of floor debate. Or take the nomination of Judge Barbara Milano Keenan to the United States Court of Appeals for the Fourth Circuit: she, too, faced a filibuster, even though she was later confirmed 99 to 0.

The problem lies with today’s partisan culture, in which blocking the other party takes priority over passing legislation or confirming candidates to key positions. Part of the problem lies with changes in Senate practices during the 1970s, which allowed the minority to filibuster a piece of legislation without holding up other items of business.

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Getting at least 60 senators on the floor several times a week is no mean feat given travel schedules, illnesses and campaign obligations. The most recent debate over extending unemployment benefits, for example, took so long in part because the death of Senator Robert Byrd, Democrat from West Virginia, left the majority with only 59 votes for cloture. The filibuster was brought to an end only after West Virginia’s governor appointed a replacement.

True, the filibuster has its benefits: it gives the minority the power to block hasty legislation and force a debate on what it considers matters of national significance. So how can the Senate reform the filibuster to preserve its usefulness but prevent its abuse? A first step, the Senate could replace the majority’s responsibility to end debate with the minority’s responsibility to keep it going. It would work like this: for the first 24 hours of debate, the majority would operate under the old rules, in which the majority has to find enough senators to vote for
 cloture. Once that time has elapsed, the debate would automatically end unless the minority could assemble 60 senators to continue it. An even better step would be to return to the old “Mr. Smith Goes to Washington” model—in which a filibuster means that the Senate is prevented from voting for a day. That’s how Senator Robert J. Ford did it around the clock—by allowing a motion requiring 40 votes to continue debate every three hours while the chamber is in continuous session. That way it is the minority that has to grab cots and mattresses and be prepared to take to the floor night and day to keep their filibuster alive.

Under such a rule, sufficiently passionate minority could still preserve the Senate’s traditions and force an extended debate on legislation. But frivolous and obstructionist misuse of the filibuster would be a thing of the past.

Mr. UDALL of New Mexico. Let me finally say to the Senator from Oregon, the Presiding Officer, that I very much appreciate his support both in working with me on the constitutional option and sorting out the details and making sure we have things right and also for his incredible work in terms of pulling together the talking filibuster part of this. I was here today when he showed his charts and he took our five ideas and, in the most simple form so the American people could understand it, capsulized those in those five charts.

I have been telling my staff—and you need to do this by the end of the debate—we need to find a way to shrink those and put those in the RECORD also because here we are sitting on the floor and we have those charts and we need to somehow have those be a representation also.

So with that, I yield the floor.

RULES REFORM

Mr. BENNET. Mr. President, I rise today in support of reasonable efforts to reform the Senate Rules. The American people expect us to work together to find solutions to the problems of the day. Yet anyone watching this body over the last two years will tell you that a few of the senator’s secret objections. And we have moved well beyond the time of filibustering in exceptional circumstances and to provide for extended debate. In fact, the filibuster has been so corrosive to this body that we rarely ever have debate during filibusters. The average American turns on their TV and only sees endless live quarrel calls.

The American people are counting on us to get past the tired partisan bickering. This is not about Democrats and Republicans. It has to be about the American people, what is in their interests. Whether one Senator secretly holding up a nominee’s career for a year is in their interests. Whether promoting filibusters that stifle, rather than promote debate. I am all for extended debate, yet filibustering motions to even proceed to measures has the result of actually preventing the Senate from even addressing the important issues of the day.

My resolution would also eliminate secret holds and place a time limit on all holds by individual Senators.

And it would require filibustering Senators to actually show up and vote in order to continue to block legislation. And if you want to obstruct Senate business, you can just go home. How does this promote debate? My commonsense proposal only requires you to stand up and be counted if you want to filibuster a bill or a nomination.

I don’t have a monopoly on good ideas for reform. We have colleagues who have been here for many years with a lot to add to this discussion. And it is also healthy that so many new Members are introducing their own ideas. I am hopeful that we can achieve some consensus for the good of the country.

THE PRESIDING OFFICER. The Senator from Mississippi.

RUSSIA

Mr. WICKER. Mr. President, I am speaking today on a very important international foreign policy issue. That is our nuclear disarmament. Last month, the leadership of this body, and I regret that. I always thought that nuclear arms treaties with regard to our nuclear stockpile should be based on the security of the American people and that the primary issues should be what is in the best interests of the United States. What we saw a lot of in the debate last month was instead an emphasis on New START as the centerpiece of this administration’s effort to reset relations with Russia. I certainly support the resetting of our relations with Russia, but I do not believe the New START treaty was the best way to advance this.

But it should concern all of us, it should concern everyone within the sound of my voice, regardless of how we voted on New START that within 2 weeks’ time of this body approving the New START treaty, a Russian court issued a second spurious guilty verdict against Mikhail Khodorkovsky and Platon Lebedev. Almost simultaneously, authorities in Russia arrested a prominent Russian opposition figure, former Deputy Prime Minister Boris Nemtsov. These events took place within days of each other.

What do these recent events mean? To me, they are two other examples of the way the current Russian leadership does not respect universal values such as the rule of law or freedom of expression and assembly. The Russian Government does not share our commitment to international norms or fostering modernization. Resetting U.S.-Russian relations will be exceedingly difficult while these differences persist.

During the last Congress, I spoke several times on the trial of Mikhail Khodorkovsky and Platon Lebedev. I concluded my most recent remarks by saying that I hoped Russia would choose the right path and somehow justice would prevail in that case. Sadly, it did not. A Russian court issued another politically motivated guilty verdict against these two Russian dissidents. This disturbing verdict reveals that the Russian judiciary lacks independence and that Russian authorities