Without objection, it is so ordered.

RELATIVE TO THE DEATH OF EDWARD W. BROOKE, III, FORMER UNITED STATES SENATOR FOR THE COMMONWEALTH OF MASSACHUSETTS

Mr. MCCONNELL. I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 19, which was introduced earlier today.

The PRESIDENT pro tempore. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 19) relative to the death of Edward W. Brooke, III, former United States Senator for the Commonwealth of Massachusetts.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The resolution (S. Res. 19) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

MEASURE READ THE FIRST TIME—S. 1

Mr. MCCONNELL. Mr. President, I understand there is a bill at the desk, and I ask for its first reading.

The PRESIDENT pro tempore. The clerk will read the bill by title for the first time.

The assistant legislative clerk read as follows:

A bill (S. 1) to approve the Keystone XL Pipeline.

Mr. MCCONNELL. I now ask for a second reading on this measure, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDENT pro tempore. Objection is heard.

The bill will be read for the second time on the next legislative day.

ORDERS FOR WEDNESDAY, JANUARY 7, 2015

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Wednesday, January 7, 2015; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each; further, that the Senate recess from 12:30 p.m. until 2:15 p.m.to allow for the weekly conference meetings.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the provisions of S. Res. 19 as a further mark of respect to the memory of the late Senator Edward William Brooks III, of Massachusetts, following the remarks of Senator UDALL for 15 minutes and Senator MERKLEY for 15 minutes.

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

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

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

RESOLUTION OVER, UNDER THE RULE—S. RES. 20

Mr. UDALL. Mr. President, I have a resolution at the desk of which Senator MERKLEY and I are cosponsors.

The PRESIDING OFFICER. The clerk will read the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 20) limiting certain uses of the filibuster in the Senate to improve the legislative process.

Mr. UDALL. I ask for its immediate consideration and to send the resolution over, under the rule, I, therefore, object to my own request.

The PRESIDING OFFICER. Objection is heard.

The resolution will go over, under the rule.

Mr. UDALL. Mr. President, I rise today to talk about our continuing effort to change the Senate rules as we begin the 114th Congress. This is the same process Senators MERKLEY, Harkin, and I used at the beginning of the last Congress when we introduced a similar resolution. At that time, Majority Leader REID wanted to have the debate about reforming our rules after the inauguration.

He was willing to work with us and protect our interests until we could debate our proposal. By doing so, he preserved the right of a simple majority of this body to amend the rules in accordance with article I, section 5 of the Constitution.

I hope Majority Leader MCCONNELL will extend to us this same courtesy if he chooses to address other issues before rules reform.

It has been the tradition at the beginning of many Congresses that a majority of the Senate has asserted its right to adopt or amend the rules. Just as Senators of both parties have done in the past, we do not acquiesce to any provision of Senate rules—adopted by a previous Congress—that would deny the majority that right.

The resolution I am offering today is based on proposals we introduced at the start of the 112th and 113th Congresses. At that time, many called our efforts a power grab by the majority. But we were very clear. We would support these changes even if we were in the minority, and here we are today, reintroducing the reform package as Members of the minority.

These changes do not strip minority rights. They allow the body to function as our Founders intended. The heart of our proposal is the talking filibuster. The filibuster once was a tool that was used sparingly. It allowed the minority to be heard. Today it is abused too often and far too easily.

I have said many times that the Senate has become a graveyard for good ideas. The shovel is the broken filibuster and other procedural tactics.

The system is broken. But in the last election I think the message was clear. The electorate said: Fix it, do your job, and make the government work. That is what our resolution is intended to do.

Our reforms were not adopted in the last Congress, but we made some progress. Strong support for fixing the Senate led leaders REID and MCCONNELL to address the dysfunction in the Senate and make some moderate changes.

Unfortunately, it did not take long for the leaders' gentlemen's agreement to break down. In November 2013 the abuse of the rules—and the obstruction—reached a tipping point, and so the majority acted within the precedence of the Senate. We changed the rules to prevent the minority from abusing the rules and obstructing scores of qualified nominees for judicial and executive appointments.

I believe that drastic step was unfortunate, but it was also necessary. The minority has a right to voice objections but not to abuse the rules to obstruct justice by preventing judges from being confirmed or by preventing the President from getting his team in place.

By changing the rules, the 113th Senate was able to confirm 96 judges. In fact, it confirmed more judges than any modern Congress since 1980.

The 113th Congress also confirmed 293 executive nominations in 2014—the most since 2010.

That is an incredible change. It was a bold but necessary action. But it also led to even greater polarization in the Senate. That polarization could have been prevented if the Senate had adopted our reforms at the beginning of the 113th Congress.

That is why I strongly urge the new majority leader to continue the change

that was adopted in November. It allows most judicial and executive branch appointees to be confirmed by a straight majority vote. I urge him to continue the progress we made last Congress and adopt the rest of our proposed reforms at the start of this Congress.

Anyone who has watched this Senate try to legislate in the past few years knows we still are hobbled by dysfunction. We voted on cloture 218 times just over the past 2 years. To put that in perspective, the Senate voted on cloture only 38 times in the 50 years after the rule was adopted in 1917. We cannot continue down this path.

The unprecedented use of the filibuster and other procedural tactics by both parties has prevented the Senate from getting its work done. The Senate needs to return to its his historical practice and function as a deliberative yet majoritarian body, when filibusters were rare and bipartisanship was the norm.

We believe the proposed rule changes in our resolution provide commonsense reforms. This will restore the best traditions of the Senate and allow it to conduct the business the American people expect.

We have one goal, whether we are in the majority or in the minority: to give the American people the government they expect and deserve, a government that works.

We said before, and we say it again, that we can do this—with respect for the minority, with respect for differing points of view, with respect for this Chamber, but, most of all with respect for the people who send us here.

The right to change the rules at the beginning of a new Congress is supported by history and by the Constitution. Article I, section 5 is very clear. The Senate can adopt and amend its rules at the beginning of the new Congress by a simple majority vote. This is known as the constitutional option, and it is well named.

It has been used numerous times—often with bipartisan support—since the cloture provision was adopted in 1917.

Opponents of the Constitutional Option say that the rules can only be changed with a two-thirds supermajority, as the current filibuster rule requires. And they have repeatedly said any attempt to amend the rules by a simple majority is ''breaking the rules to change the rules.'' This simply is not true.

The supermajority requirement to change Senate rules is in direct conflict with the U.S. Constitution. Article I Section 5 of the Constitution states that, ''Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.'' When the Framers required a supermajority, they explicitly stated so, as they did for expelling a member. On all other matters, such as determining the chamber's rules, a majority requirement is clearly implied.

There have been three rulings by Vice Presidents, sitting as President of the Senate, on the meaning of Article I Section 5 as it applies to the Senate. In 1957, Vice President Nixon ruled definitively:

> [W]hile the rules of the Senate have been continued from one Congress to another, the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of a previous Congress. Any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional.

Vice-Presidents Rockefeller and Humphrey made similar rulings at the beginning of later Congresses.

In 1979, when others were arguing that the rules could only be amended in accordance with the previous Senate's rules, Majority Leader Byrd said the following on the floor:

> There is no higher law, insofar as our Government is concerned, than the Constitution. The Senate rules are subordinate to the Constitution of the United States. The Constitution in Article I, Section 5, says that each House shall determine the rules of its proceedings. Now we are at the beginning of Congress. This Congress is not obliged to be bound by the dead hand of the past.

In addition to the clear language of the Constitution, there is also a long-standing common law principle, upheld in the Supreme Court, that one legislature cannot bind its successors. For example, if the Senate passed a bill with a requirement that it takes 75 votes to repeal it in the future, that would violate this principle and be unconstitutional. Similarly, the Senate of one Congress cannot adopt procedural rules that a majority of the Senate in the future cannot amend or repeal.

Many of my Republican colleagues have made the same argument. For example, in 2003 Senator JOHN CORNYN wrote in a law review article:

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

So amending our rules at the beginning of a Congress is not ''breaking the rules to change the rules.'' It is reaffirming that the U.S. Constitution is superior to the Senate rules, and that when there is a conflict between them, we follow the Constitution.

And I would like to make clear that by moving on to other business, we are not waiving our constitutional right to amend the Senate's rules with a majority vote. In 1975, when the cloture threshold was reduced from two-thirds to three-fifths, the reform effort lasted until March. But on the first day of that Congress, Senator Mondale introduced his resolution and unequivocally stated that he was reserving his right to call for a majority vote at a later date.

Senator Mondale made the following statement on that first day:

> Mr. President, I wish to state, as has been traditional at the commencement of efforts to amend rule XXII, that, by operating under the Standing Rules of the Senate the supporters of this resolution do not acquiesce to the applicability of certain of those rules to the effort to amend rule XXII; nor do they waive any rights which they may obtain under the Constitution, the practice of this body, or certain rulings of previous Vice Presidents to amend rule XXII, uninhibited by rules in effect during previous Congresses.

Today, I take the same position as Senator Mondale and many other reformers did over the years. I understand that Majority Leader MCCONNELL may move on to other business, but I am not acquiescing to any provision in the Senate rules that prevents a majority from amending those rules. We can, and should, take time to debate our proposal and have an up or down vote. I know other colleagues also have reform proposals. They all deserve consideration.

This is not just about rules. It is about the norms and traditions of the Senate. They have collapsed under the weight of the filibusters.

Neither side is 100-percent pure. Both sides have used the rules for obstruction. No doubt they have had their reasons, but I don't think the American people care about that. They don't want a history lesson or a lesson in parliamentary procedure. They want a government that is reasonable and that works.

I hope all my colleagues, especially the new Senators, give special consideration to reform. We do not need to win every legislative or nomination vote, but we need to have a real debate—and an open process—to ensure we are, actually, the greatest deliberative body in the world.

We changed the rule regarding nominations. That was an important start, but it was the beginning—not the end. We still need to reform the Senate rules.

Mr. President, I ask unanimous consent that Senator FRANKEN be added as a cosponsor to S. Res. 20.

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

Mr. UDALL. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. MERKLEY. Today we are at the start of a new Congress, and every new Congress provides the opportunity for a fresh start of the work we do on behalf of the American people. Congratulations to our newly elected Members and congratulations to our returning elected Members.

It is appropriate at this moment, at the start of a new, 2-year Congress, that we ponder how to make this institution work for the American people, work well within our constitutional framework and our responsibility for

advice and consent on nominations, and work well in terms of our responsibility for legislation that will address the big issues facing our Nation.

Since I came to the Senate in 2009, it has been a pleasure to work with my colleague from New Mexico. My colleague from New Mexico came to the Senate from the House. I came here from the State of Oregon but with memories of how the Senate worked many years before when I first came to the Senate as an intern in 1976.

I must say, in the 1970s, this body worked very much in the manner that one might anticipate. A bill was put forward. There was no filibuster of a motion to proceed. The bill was debated. A group of Senators would be ready to call upon the President of the Senate to submit their amendment.

Whoever was called on first—that amendment was debated. That amendment was debated, and in a short period of time it was voted on and then the Senators would vie for the opportunity to present the next amendment.

What I saw in 2009 when I came back as a Senator was a very different Chamber, a Chamber where long periods of time would be spent debating what bills to debate. The motion to proceed would be filibustered. So we would waste the energy of this institution not upon delving into the complexities of an issue and how to best address it but simply on the procedural issue of whether we were going to start debate on a particular bill.

This situation has certainly been observed by the American public. The American public's esteem for our institution has declined steadily over the past several decades as the paralysis of this institution has increased.

Observers of Congress report that the past two Congresses have been among the least productive in modern history—too few amendments getting considered, paralysis even after a bill has come to the floor on which amendment to address first, and too many filibusters—filibusters not of the type of old in which a Senator would delay action on a bill by holding forth as long as his energies would enable him or her to stand on this floor and carry forth, but filibusters of the silent kind, the kind in which there is simply an objection to closing debate. But then this Chamber is filled with silence because no one has anything left to say on it, and no one is willing to spend the time and energy to even declare to the American people: I am here on this floor speaking at length because I want to block this bill. There is no accountability to the public in that fashion—no transparency. So the silent filibuster has come to haunt this hall.

Well, that is a very different Senate than the Senate in the mid-1970s and one that my colleague from New Mexico and I are determined to change—to restore this Chamber to being a great deliberative body. We can have all the interesting policy ideas in the world, and we can have, certainly, insights on how to make things work better, but if the machinery for this body to consider those ideas is broken, then, certainly, those abilities are not put into their best opportunity or framework. Many folks, when we have been debating the functionality of the Senate, have said: But, remember, it was George Washington who said that the Senate should be a cooling saucer—in other words, saying that the dysfunction and paralysis of the Senate is just exactly the way it was designed to be.

That is certainly a misreading of the comment attributed, perhaps apocryphally, to George Washington. George Washington was referring to the fact that the Senate was designed with a constitutional framework of 6 years, of one-third of the Members rotating every 2 years, of a Chamber that was initially elected indirectly by the States—rather than by popular election—and that this would give it more chance to be thoughtful and reflective on the issues that come before the Nation.

This thoughtfulness, this ability to gain reflexion, is, in fact, exactly what the Senate should be. It is the quality that led to the Senate being described as the world's greatest deliberative body. But the filibuster, and the abuse of it, has changed that. And certainly the inability of the minority and the majority to be able to put forth amendments in a timely fashion and to debate them has changed.

I think back to what Alexander Hamilton said early in the history of our Nation. He said that the real operation of the filibuster ''. . . is to embarrass the administration, to destroy the energy of government, to substitute the pleasure, caprice and artifices of an insignificant, turbulent or corrupt junto to the regular deliberations and decisions of a respectable majority.''

That phrase, isn't that what we need to restore in this body, the regular deliberations and decisions of a respectable majority?

This is all part of this cycle of a democracy in which citizens vote for an individual who they feel reflects what needs to be done in our Nation, and those individuals come to this [chamber/Chamber] and they proceed to have an agenda. That agenda, if it is part of the majority agenda or a bipartisan majority agenda, gets implemented and those ideas get tested. Those ideas that work well can be kept and those ideas that work poorly can be thrown out. But if this Chamber is locked in paralysis, that cycle of testing ideas and of citizens voting for a vision and seeing that vision implemented and tested is broken. That is much where we are now.

Alexander Hamilton went on to say that when the majority must conform to the views of the minority, the consequence is '' . . . tedious delays; continual negotiation and intrigue; contemptible compromises of the public good.''

I think that is exactly what we have seen too much of in this Chamber, whether it be one party in charge or the other party in charge. As my colleague noted, this is not a partisan issue. The ideas we put forward when in the majority we are now putting forward in the minority. Isn't that the test of whether an idea is in fact designed for the good of this institution, rather than the advantage of the moment?

Our Senate is broken. The American people know that. And it is our responsibility as Senators to work to change that. That is why there should now be a full debate among the Members on the best ideas on how to enable this Chamber to work better. Those ideas should come from the right of the aisle, from the left of the aisle, and ideas in partnership between colleagues on both sides of the aisle. Again, this shouldn't be about the advantage of the moment, it should be about the successful function of our beloved Senate.

One of the things we have seen in the course of this broken Senate is our failure to adequately dispose of our responsibility for advice and consent on nominations under the Constitution. That responsibility is designed to be a check on outrageous potential nominations from the President. It is not designed to be a way for one coequal branch of government—that is the Congress—to seek to systematically undermine other branches of the government, be it the judiciary or the executive. So we need to have a timely and systematic way of considering nominations. That certainly has fallen apart in the course of the poisonous and partisan nature of deliberations here over the last few years. But we can change that.

Indeed, we stepped forward a year ago November to test a rule to close debate on most nominations with a simple majority. The result has been quite spectacular. The number of district judges who have been considered on the floor of this Chamber has more than doubled—has almost tripled. Judicial vacancies have been cut in half—extremely important to a fair and capable judiciary. Executive nominations roughly doubled.

It should not be the goal of this Chamber, whether the majority or the minority, to disable the executive branch by preventing the positions from being filled in the executive branch. If a majority says a person is reasonable, then that nomination should proceed expeditiously.

Senator UDALL and I have put forward, as he noted, a resolution that is in keeping with the package of ideas we worked on in 2011 and 2013, so we are presenting those ideas here in 2015. But my encouragement is for people to put forward their ideas, individual Senators, to add their ideas or put forward individual components that will contribute to this dialogue.

One of the ideas we have, and I will be offering to this body, is to create a process to consider rule changes at the start of each legislative session—a detailed way of addressing that, since

currently we have no pattern, no guide, to holding a debate about how the Senate functions.

A second will be to consider the expedited consideration of most nominations. We made a rule change a couple of years ago—well, November a year ago. And also, before that, we made some minor changes in timing in January 2013. That came out of the debate just 2 years ago. Those January 2013 changes are expiring. Those timelines are expiring. So that goes away. Should those be adopted as part of the standing rules rather than simply the standing orders which expire with the change of a Congress?

A third idea is to end the filibuster on the motion to proceed to legislation. Think about how this has changed. If you take the 10-year period between 1973 and 1982, a 10-year period that embraces when I first came here as an intern, there were 14 times there was a filibuster on a motion to proceed. If you take 10 years from roughly 2003 to 2012, that number went up to about 160—more than a tenfold increase in the paralysis of getting bills to the floor to be discussed.

Why should there be filibusters at all on a conference committee? If the House has put forward an idea and passed it, and the same bill has been passed by the Senate, isn't it common sense to enable a delegation from each Chamber to meet together to work out a compromise? We did make a modest improvement in this procedure, but there is much more work to be done on this.

In fact, I was mystified when I came here in 2009 as to why there weren't conference committees going on. First I heard: Well, it is easier for Chairs of committees to get together informally and try to work out something behind the scenes. But then, as I asked more questions, the answer became: Because there are three steps required, and all three of which enable a filibuster, and that paralysis just isn't worth entertaining the time on the floor. Well, let us restore conference committees. Let us get rid of filibusters on conference committees.

And certainly we must improve floor debate by ensuring amendments can be introduced and debated. The minority has said in recent years that this is a deep disadvantage to them. But I can tell you as a Member of the previous majority that it was a disadvantage to majority Members as well not to be able to introduce and debate amendments.

We also certainly must replace the silent filibuster with the talking filibuster so there is transparency and accountability to the use of this instrument on final passage of a bill.

Let us not let this opportunity pass. Let us not continue on autopilot from one Congress to the next. Let us take this moment of opportunity to start on this path to restoring the U.S. Senate to being the world's greatest deliberative body in order to address the big issues before us and for the betterment of our Nation.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. The Senate stands adjourned until 9:30 a.m. tomorrow, and does so as a further mark of respect to the memory of the late Senator Edward William Brooke, III, of the Commonwealth of Massachusetts.

Thereupon, the Senate, at 1:40 p.m., adjourned until Wednesday, January 7, 2015, at 9:30 a.m.