nominations because it is taking too long, and so they made a proposal. It was 2 hours, equally divided—so it would actually be 1 hour—for district court judges, 8 hours for other nominees, which again equally divided would actually be 4 hours total for other lower nominees, 30 hours for circuit court, Supreme Court, Cabinet officers.

Republicans joined with Democrats in 2013 and with 78 votes at the beginning of President Obama's second term—and may I remind this body, Republicans were not excited about President Obama's second term—Republicans joined with Democrats on this one principle: Every President should be able to hire their own staff and their staff not be blocked. When the American people vote for a President, this body should respect the vote of the American people and allow that President to hire their staff. Now, when President Trump was elected, Democrats have 128 times blocked President Trump from getting his nominees—128 times.

I have, for now 2 years, met with my Democratic colleagues, and I have asked, let's put back into place exactly what Republicans voted with Democrats to do. I am asking Democrats to now vote with Republicans to do that. They have said no for 2 years.

So I simplified the proposal and said: Let's just make it straightforward and simple, taken from the same principles Harry Reid put forward under President Obama. Let's make that permanent, no matter who the President is now or in the future. Let's make it consistent and straightforward.

I was told no by every single Democrat, with this one exception. I will vote for that proposal as long as it starts in January of 2021. I am glad you Republicans joined with Democrats, they would say, to help President Obama get nominees, but we will not help President Trump and will block him all the way through. Now, if you want to open this up for 2021, we will be glad to be able to help.

I want to reiterate that Republicans believe whoever the President is, when the American people select a President, they should be able to hire their staff. I wish my Democratic colleagues believed the same thing. Because of that, we are making a change today. I have worked for months, meeting with Democratic colleagues, trying to find some way we could come to an agreement as was done in 2013, where Republicans and Democrats came together to resolve this. I have been rebuffed for 2 years. Not a single Democrat has been willing to join us in this, not a single one. That is unfortunate.

At the end of the day, we will try to restore this body back to how it used to function for two centuries, when every President was allowed to get a hearing for their nominees and get a vote in the Senate. For two centuries, we functioned that way. I think it is not unreasonable to function that way again in this body.

I look forward to this dialogue, and I look forward to the day we can get this issue resolved so we can get back to the work of legislation because we can't even get to legislation right now because we are blocked on nominations. So let's get the nomination issue resolved, as we have for two centuries, and then let's get on to legislation and finish the task.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. PERDUE). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. COTTON. Mr. President, we raise this point today, not just because of what has happened to Donald Trump's nominees over the last 2 years, but we reached this point because 16 years ago the Senator from New York started this Senate down a path that was unprecedented in 200 years. For 200 years, any President's nominees got an up-or-down vote. That was the custom, the unwritten rule, if you will.

Starting in 2003, specifically geared toward a brilliant young lawyer named Miguel Estrada, the Senator from New York warped those unwritten rules and customs. That has brought us to where we are today. So today Senator SCHUMER will reap what he sowed. I will call it Miguel Estrada's revenge.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. I ask unanimous consent that the mandatory quorum call be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

CLOTURE MOTION

The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Jeffrey Kessler, of Virginia, to be an Assistant Secretary of Commerce.

Mitch McConnell, Steve Daines, John Thune, John Cornyn, James M. Inhofe, Pat Roberts, Mike Crapo, Chuck Grassley, Richard Burr, John Barrasso, Jerry Moran, Roy Blunt, Shelley Moore Capito, John Boozman, Johnny Isakson, Thom Tillis, John Hoeven.

The PRESIDING OFFICER. The mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Jeffrey Kessler, of Virginia, to be an Assistant Secretary of Commerce shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. THUNE. The following Senator is necessarily absent: the Senator from Mississippi (Mrs. HYDE-SMITH).

Mr. DURBIN. I announce that the Senator from California (Ms. HARRIS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 95, nays 3, as follows:

[Rollcall Vote No. 58 Ex.]

YEAS—95

Alexander	Fischer	Peters
Baldwin	Gardner	Portman
Barrasso	Graham	Reed
Bennet	Grassley	Risch
Blackburn	Hassan	Roberts
Blumenthal	Hawley	Romney
Blunt	Heinrich	Rosen
Booker	Hirono	Rounds
Boozman	Hoeven	Rubio
Braun	Inhofe	Sasse
Brown	Isakson	Schatz
Burr	Johnson	Schumer
Cantwell	Jones	Scott (FL)
Capito	Kaine	Scott (SC)
Cardin	Kennedy	Shaheen
Carper	King	Shelby
Casey	Klobuchar	Sinema
Cassidy	Lankford	Smith
Collins	Leahy	Stabenow
Coons	Lee	Sullivan
Cornyn	Manchin	Tester
Cortez Masto	Markey	Thune
Cotton	McConnell	Tillis
Cramer	McSally	Toomey
Crapo	Menendez	Udall
Cruz	Merkley	Van Hollen
Daines	Moran	Warner
Duckworth	Murkowski	Whitehouse
Durbin	Murphy	Wicker
Enzi	Murray	Wyden
Ernst	Paul	Young
Feinstein	Perdue	

NAYS—3

Gillibrand	Sanders	Warren

NOT VOTING—2

Harris	Hyde-Smith

The PRESIDING OFFICER. On this vote the yeas are 95, the nays are 3.

The motion is agreed to.

The Democratic leader.

Mr. SCHUMER. Mr. President, this is a very sad day for the Senate. At a time when Leader MCCONNELL brags about confirming more judges than anyone has done in a very long time, he feels the need to invoke the terribly destructive and disproportionate procedure of the nuclear option in order to fast-track even more of President Trump's ultraconservative nominees to the Federal bench.

Before I discuss that in greater detail, I want to note for the record that Democrats were prepared to confirm the nomination of Mr. Kessler by unanimous consent, so the cloture vote we had was unnecessary.

If you have been listening to Senators debate this issue in recent days, you have heard a lot of claims and

counterclaims about cloture votes, about rates of confirmation for circuit and district courts in different Congresses, about judicial vacancies and other arcane things that may not sound very illuminating. So I want to start by making clear what this debate is really all about. I want to issue a warning about what is at stake in this fight. Underneath all of the statistics, what Leader MCCONNELL, President Trump, and Republicans in the Senate are trying to do is use the courts to adopt the far-right agenda that Republicans know they cannot enact through the legislative process.

Why can't they? Because it is an agenda the American people reject, an agenda set by the far right, which Republicans in the Senate follow.

Senator MCCONNELL and Republicans in Washington understand that they will never persuade enough Americans to support backward goals like ending women's reproductive freedom, taking away healthcare, rolling back civil rights, making it more difficult to vote, or abolishing safeguards for clean air and clean water.

Instead, they decided there was another route to achieving their policy goals, one that requires neither public support nor legislation: the courts. So Republicans, pressured by the hard right and by wealthy, special interest donors, launched a sustained effort to pack the courts with very conservative judges, preferably young ones, who would sit on the bench for decades. These prospective judges were identified as early as law school, having signaled their hard-right leanings through their writings or membership in conservative groups like the Federalist Society.

Nominees like these started to appear during the George W. Bush administration. Take Miguel Estrada, a Bush nominee with no judicial experience, who held membership in the Federalist Society but had no writings and claimed he had never even thought about Roe v. Wade.

Or take William Pryor, another Bush nominee, who called Roe ''the worst abomination in the history of constitutional law'' and who argued that States should have the right to criminalize homosexuality.

Or take Charles Pickering, who advocated a reduced sentence for a man convicted of burning a cross in the front yard of an interracial couple.

Before the Republicans launched their campaign to remake the courts, neither party would have dared put forward such radical nominees.

Starting with his campaign and into his Presidency, President Donald Trump has been captive—totally captive—to the conservative campaign to take over the courts. Before he was a Presidential candidate, Mr. Trump had been a Democrat and a person with no fixed judicial philosophy, so conservatives didn't trust him. He and his advisers came up with a solution: Ask the Federalist Society to produce a list of far-right Supreme Court nominees, and then have candidate Trump pledge to only nominate people on that list. And not just the Supreme Court—the Federalist Society is and continues to be a huge influence on nominees to the circuit courts.

No other Presidential candidate had so willingly and openly outsourced judicial nominations this way, but it mollified the hard right, and the President has dutifully nominated people from the list to the Supreme Court. He has made similarly ideological choices for the circuit and district courts.

This is an alarming strategy because, over the last 2 years, President Trump has nominated and Senate Republicans have advanced the most unqualified and radical nominees in modern times.

Consider the nomination of Ryan Bounds, who misled the Oregon Senators' bipartisan judicial selection committee about his controversial writings in the past, writings in which he dismissed efforts to increase diversity as mere ''race-think,'' criticized Stanford University's suggested punishment for students who defaced an LGBT pride statue, criticized a student group for protesting against a hotel company that had fired workers trying to unionize, and disregarded the value of university disciplinary actions against students accused of sexual violence. Five of the seven members of Oregon's in-State screening committee, including the committee's chair, said they would not have recommended Bounds had they known of his college writings when they first interviewed him. Fortunately, it became clear that a few Republicans would not support Mr. Bounds on the floor, and the nomination was withdrawn.

Consider the nomination of Thomas Farr, who has an extensive record defending discriminatory voting laws and racial gerrymandering in North Carolina. He is also credibly alleged to have played a role in the voter suppression efforts of the Jesse Helms campaign, including sending over 100,000 postcards to heavily African-American precincts that ''falsely told voters they could be found ineligible to vote based on several conditions involving place and length of residence.'' Amazingly, after something as despicable as that, President Trump and Leader MCCONNELL pushed hard for his nomination, but it could not withstand scrutiny by the Senate and was ultimately withdrawn due to the united Democratic opposition and a few conscientious Republican Senators.

I would note that in the cases of both Mr. Farr and Mr. Bounds, the Republican concerns emerged only at the end of postcloture debate time, which Republicans now propose to limit. Had we had only 2 hours, horrible nominees—way beyond the bounds of normal nomination and discourse, even from conservatives—like Farr, like Bounds would be sitting on the courts today.

I agree with what my colleague Senator KLOBUCHAR has said:

> Two hours for a lifetime appointment . . . is unacceptable.

She said:

> Two hours for a lifetime appointment, with huge influence on people's lives, is unacceptable. It's ridiculous. It's a mockery of how this institution should work.

It is not just the courts. There are many examples in the executive branch as well. Ann Marie Buerkle, nominated to chair the CPSC—just today the Post reported that this nominee blocked action at the Commission to recall hundreds of thousands of potentially defective baby strollers, even in the face of reports that they caused ''potentially life-threatening injuries.'' She even kept Democratic Commissioners in the dark about the investigation.

Of course, there is Chad Readler, who led the charge to end preexisting condition protections. President Trump and Senate Republicans, the self-declared ''party of healthcare,'' rewarded him by overwhelmingly confirming him to a lifetime position as a circuit court judge. Despite Mr. Readler's conspicuous role in trying to curtail Americans' healthcare, no Republicans were willing to stand up to President Trump and vote against his confirmation.

At this point, people listening to these proceedings might be asking themselves: What happened when a Democratic President occupied the White House?

The answer is that Republicans, led by Senator MCCONNELL, remained undeterred. In such times, they chose to employ the extraordinary tactic of denying confirmation to a Democratic President's nominees in order to hold vacancies open until a Republican could regain the Presidency. It was an audacious and insidious gambit, a way to nullify a Democratic President's power to fill judicial vacancies.

We saw this tactic during the Clinton administration, when Republicans on the Judiciary Committee killed a number of President Clinton's quite moderate judicial nominees, even without the basic courtesy of a hearing.

We saw it again during the Obama administration, when Republicans used the filibuster and other forms of delay to more than double the number of circuit and district court vacancies. During Obama's last 2 years in office, the Republican Senate confirmed fewer circuit court nominees than any Congress in 70 years.

Then, in March of 2016, Senator MCCONNELL and Senate Republicans took this maneuver to a new Machiavellian low. They refused to even consider President Obama's nomination to the Supreme Court of the United States, Circuit Judge Merrick Garland, one of the most respected jurists in the Nation, a man known not only for his judicial excellence and perfect judicial temperament but his moderation. In fact, Senator Orrin Hatch, a conservative's conservative and the former chairman of Judiciary Committee, had previously endorsed Judge Garland for the Supreme Court.

But the merits didn't concern Senator MCCONNELL. His cynical strategy required Republicans to block the Garland nomination for almost a year until after President Obama's second term ended, and that is exactly what they did. It was widely condemned as a naked power grab that nullified the President's constitutional authority. It was a terrible, deeply lamentable moment for our democracy and our Constitution. Yet, as the New York Times reported, Senator MCCONNELL said it was one of his ''proudest achievements.''

After President Trump took office, Republicans sensed an opportunity to grease the conveyer belt even more. Senator MCCONNELL ordered the Judiciary Committee chairman to do away with the longstanding practice that Senators be consulted about district court nominees in their home States. The blue-slip tradition ensured that judicial nominees reflected the ideology and values of the State to which they were nominated. It provided some healthy counterbalance against nominees who were outside the mainstream from either party or were lacking in proper qualifications. Thanks to Senate Republicans, led by Senator MCCONNELL, that protection is now history.

So when Republicans complain about Democratic handling of nominees, there is no other word for it but hypocrisy. You don't have to take my word for it. According to the Congressional Research Service, more circuit judges have been confirmed in the first 2 years of the Trump administration than in the first 2 years of any Presidency since at least the Truman administration.

The majority leader himself has celebrated the pace of confirmations. He bragged about it to the Heritage Foundation. He said this to them a few months ago:

> We confirmed every circuit judge. We've now done 29 circuit judges. That is a record for this quick in any administration in history.

Those are Leader MCCONNELL's words, not mine.

Now we have to change the rules, even though you have confirmed more circuit court judges than anyone in history. That is a shame. That is a disgrace. That is not the Senate we want. For Leader MCCONNELL to brag about confirming more judges than ever before and then to complain about Democratic obstruction and say that the process is broken so you have to change the rules is the height of hypocrisy.

Leader MCCONNELL and Senate Republicans also complain about the pace of confirmation for President Trump's executive branch and independent Agency choices. They conveniently omit Republicans' sorry record of obstruction of nominees to Democratic seats at important agencies like the NLRB, the FDIC, and the SEC, which have suffered as Republicans caused dedicated public servants like former NLRB Chair Mark Pearce to languish for months or even years.

It is actually a little surprising that Leader MCCONNELL and his Republican colleagues would draw attention to the subject of executive nominees now, given the appalling history of incompetence, corruption, and venality among President Trump's so-called ''best people,'' not to mention the fact that there are hundreds of vacancies the President can't even be bothered to fill.

Staffing the government is serious business and so is the system of justice assigned to the courts by our Constitution. They both deserve better than the Senate Republicans' cynical, partisan efforts to turn the Senate into a conveyer belt for ideological conservatives.

The notion that President Trump's judicial nominees have been treated unfairly is simply false. There is no truth to it, as all of these statistics that I have talked about have shown. What Republicans really want to see is the elimination of yet another norm of the Senate so they can automate and expedite the nomination process without a modicum of debate. They are all for ''consent'' with no ''advice.'' With all undue haste, they want to pack the courts with partisan warriors, not impartial jurists. It is outrageous.

Democrats have a different view of who should sit on the Federal bench. We have a different view of the role of this Chamber. Our judicial system works best when we hold nominees to three simple standards: excellence, moderation, and diversity. These are not ideological litmus tests. They are the pillars of a healthy system of justice. They are the benchmarks by which we can rest assured that the men and women who are appointed to the Federal bench will respect the rule of law and execute their duties impartially.

It cuts both ways. When Republicans are prepared to act in good faith and advance nominees of high caliber, we are ready to give them the consideration they deserve. For generations, the Senate has done the work of the American people through consensus, through compromise, and through cooperation. It has been a place where seemingly impossible disagreements have found sensible solutions. Indeed, the legacy of the Senate is the story of debate—ample debate—followed by compromise. It is in large part thanks to the rules that govern how this Chamber works. It is crucial that those rules not be twisted or abused for partisan advantage.

The majority, by taking yet another step to erode that legacy, risks turning this body into a colosseum of zero-sum infighting—a place where the brute power of the majority rules, with little or no regard for the concerns of the minority party, and where longstanding rules have little or no meaning.

I am so sorry my Republican colleagues have gone along with Senator MCCONNELL's debasement of the Senate. To do this for such blatantly political ends is simply unworthy of this institution.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. MCCONNELL. One of the advantages of having been around the ''advice and consent'' process for as long as I have is that I know a little history. I was actually here as a young staffer on the Judiciary Committee when Richard Nixon appointed two Supreme Court Justices who were defeated. During most of those years, our Democratic friends were in the majority here in the Senate. They could have done whatever they wanted to on the executive calendar to slow down, obstruct, and prevent Republican Presidents from having nominations confirmed.

I can remember during the Clinton years the urging of both Senator Daschle and Senator Lott—when my party was in the majority—to invoke cloture on circuit court nominees whom I opposed in order to keep the Senate from developing a process of filibustering the executive calendar, which had never been done before.

The clearest example of why it was never done before is the Clarence Thomas nomination—the most controversial nomination for the Supreme Court in history, with the possible exception of Brett Kavanaugh. He came out of committee with a dead-even vote. They could have killed him in committee. He went to the floor and was confirmed 52 to 48. We all know it only takes one Senator, just one, to make us get 60 votes on something.

Joe Biden and Ted Kennedy were hard over against Clarence Thomas, but nobody—not one of the 100 Senators—said you have to get 60 votes. Clarence Thomas was confirmed 52 to 48 and has been on the Supreme Court for 30 years. He would never have been there if a single Senator—just one—had said you had to get 60 votes. My friends, I call that a pretty firm tradition that you don't filibuster the executive calendar. Was it possible? Yes, it was possible. It just wasn't done.

When did all of this start? Well, the junior Senator from New York got elected in 1998. George W. Bush gets elected in 2000. The alarms go off. They are going to appoint a bunch of crazy rightwingers to the circuit courts.

So my good friend the Democratic leader, at a seminar or a meeting, invited a couple of people named Laurence Tribe and Cass Sunstein—two rather famous liberal law professors—and they had a discussion about what to do about these awful rightwing judges who are going to be sent up.

The conclusion was to open the toolbox, take out whatever tool would work, and save America from these kinds of people. And so they did. The poster child for that was Miguel Estrada, who they said openly they were afraid was going to give President Bush the opportunity to make the first

Hispanic appointment to the Supreme Court. We had all-night filibusters. We actually stayed up all night trying to make a point.

It didn't make a difference. Ultimately, we thought maybe we should employ the so-called nuclear option. We ended up not doing it after there was a gang of 14 that developed and worked out an agreement, and some of the nominees were confirmed and some weren't. Yet what had been clearly established was that now the norm in the Senate was that you filibuster anybody that you want to on the executive calendar. That had then been established as a matter of practice, and that continued through the Bush years. There was actually an effort to keep Justice Alito from being on the Supreme Court by requiring a filibuster for the purpose of defeating Justice Alito, but it was not successful. A number of circuit judges were stopped.

When we fast-forward to the Obama years, our side used the filibuster twice to defeat two circuit judges over a period of 5½ years. Majority Leader Harry Reid decided, in his zeal, to pack the DC Circuit—that this had gone on long enough. So, in November 2013, I believe it was, the nuclear option was employed. The threshold was lowered to 51 for everybody on the Executive Calendar except for the Supreme Court. The DC Circuit court judges were confirmed. At the time, I said I didn't like the way it was done. I thought maybe those on the other side would rue the day they did it.

Amazingly enough, about a year and a half later, I was the majority leader. Funny how these things change, isn't it?

A number of my Members came up and said: Why don't we change it back.

I said: Look, I don't think we like the way they did it, but this is the way the Executive Calendar was handled for 200 years until Senator SCHUMER and his allies Laurence Tribe and a cast unseen said: Well, why don't we use any tool in the toolbox to stop judicial appointments?

I discouraged our going back to 60 because I had actually seen that both sides had respected their using a simple majority on the Executive Calendar down to 2003, so we didn't.

Now, look, with regard to these continued complaints about Merrick Garland, that is not what this proposal is about. This proposal is about sub-Cabinet appointments and district judges. For those of you who were not here in 2013, it is almost identical to what almost every one of you voted for in 2013—a standing order that lasted 2 years and a good number of us giving President Obama the opportunity to advance these sub-Cabinet appointments and district judges more quickly.

Let's talk about district judges for a minute. Chairman GRASSLEY and Chairman GRAHAM honored the blue slip for district judges. There are 47 of you guys. There is not a single district judge who comes out here on the calendar who doesn't have two blue slips returned from whomever the Senators are from the home State. What that means is that you guys are not irrelevant on district judge appointments. You are not irrelevant. For example, I tried to get my good friend the Democratic leader to approve a list of 30 district judges last fall, and 14 of them were from blue States. Oh, no. He was not going to do any district judges on a voice vote even if he were for them.

So, look, all this proposal does that we are talking about today is reduce the postcloture time for sub-Cabinet appointments—just like we helped you all do in 2013—and for district judges, none of whom will even be on the calendar until both blue slips are returned positively. It is not exactly a radical change.

Back to Merrick Garland for a minute. Look, I made the decision—and my colleagues on the Republican side joined me in making that decision—because I knew for sure, for absolute certainty, that if the roles were reversed and there were a Republican President and a Democratic Senate, you wouldn't have filled the vacancy. How did I know that? You have to go back to the 1880s to find the last time a vacancy on the Supreme Court occurred in the middle of a Presidential election year and was confirmed by a Senate of a different party from the President's—1880.

Oh, but that was not enough. In 1992, our friend Joe Biden, the chairman of the Judiciary Committee, with a Republican in the White House, a Democratic Senate, and no vacancy on the Supreme Court, helpfully opined that if a vacancy occurred, he wouldn't fill it.

Oh, but guess what. Eighteen months before the end of the Bush 43 term, the majority leader of the Senate, Harry Reid, and a fellow named CHUCK SCHUMER said that if a vacancy occurred, they wouldn't fill it. That was 18 months before the end of the Bush term.

On the business of filibustering the Executive Calendar, there is one thing I left out, and I want to catch up here. Back in 2003, when my good friend the Democratic leader started all of this that we have been wrestling with since then, he said: I am the leader of the filibuster movement, and I am proud of it. The Buffalo News, May 27, 2003. I am the leader of the filibuster movement, and I am proud of it. The Buffalo News. CHARLES E. SCHUMER recommended using an extreme tactic—a filibuster—to block some of the Bush administration's nominees for Federal judgeships. Talk about being proud of something. He started this whole thing that we have been wrestling with since 2003. He cooked it up and convinced his colleagues to do it, and once it started, it continued until 2013 when it was turned off.

So, look, where are we? The Executive Calendar is very close to being returned to the way it was treated by both parties down to 2000—not the legislative calendar but the Executive Calendar. There is nothing radical about this. He is acting like it is a sad day for the Senate. If you want to pick a sad day for the Senate, go back to 2003 when we started filibustering the Executive Calendar. He started it. That was a sad day. This is a glad day. We are trying to end the dysfunction on the Executive Calendar.

Let's talk about dysfunction. There were 128 cloture votes in the last Congress, many of them on nominees for whom there were no objections at all—128. Goodness gracious. In the first 2 years of each of the last six Presidents, cumulatively, the majority leader of whichever party had to do that 24 times in order to try to advance a nomination.

So don't hand me any of this ''sad day in the Senate'' stuff. What has been going on here is completely and totally unacceptable. Do you know why I know that? It is because many of your Members, Mr. Leader, have told me privately that they would be happy to do this provided it would take effect in January 2021. Oh, what might happen in January 2021? I can't imagine. Well, it might be a Democratic President and a Democratic Senate. I can understand—but, oh, not now.

Look, we know you don't like Donald Trump, but there was an election. He is at least entitled to set up the administration and make it function. With regard to the judiciary and circuit judges, every President of both parties feels it is his prerogative.

Senator ALEXANDER has pointed out the history of the blue slip. There has been a little confusion about that. He has noted that blue slips were not used as an absolute veto over judicial nominees until—listen to this—the 1950s, when former Judiciary Committee Chairman James Eastland of Mississippi afforded them the status because he did not want Federal judges who had been appointed by President Eisenhower to interfere with segregationist policies in the Jim Crow South. When he became the Judiciary Committee chairman, our former colleague Ted Kennedy restored blue slips to their historical purpose of ensuring consultation as opposed to serving as a one-Member veto of a qualified judicial nominee.

All we have done is restore blue slips for circuit court nominees to the consultative function they have played for most of their history.

I have been under Presidents of both parties. They do not defer to us on circuit court judges. We don't get to pick them. We almost do get to pick them when they are district court judges and when we are of the same party as the White House. We have a lot of clout because the chairmen honor the blue slips for district court judges. They are entirely contained within our States, and none of them get out here on the floor unless the Senators approve

them. There are 47 of these guys over here who are not toothless when it comes to district judges.

So this is not a bad day for the Senate; this is a day we end this completely outrageous level of interference and obstruction with this administration. I don't think anybody ought to be seized with guilt over any institutional damage being done to the Senate.

POINT OF ORDER

Mr. President, I raise a point of order that postcloture time under rule XXII for all executive branch nominations other than a position at level 1 of the Executive Schedule under section 5312 of title 5 of the United States Code is 2 hours.

The PRESIDING OFFICER (Mr. COTTON). Under rule XXII of the Standing Rules of the Senate, the point of order is not sustained.

APPEAL RULING OF THE CHAIR

Mr. MCCONNELL. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Shall the decision of the Chair stand as the judgment of the Senate?

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Ms. HARRIS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 48, nays 51, as follows:

[Rollcall Vote No. 59 Ex.]

YEAS—48

Baldwin	Hassan	Reed
Bennet	Heinrich	Rosen
Blumenthal	Hirono	Sanders
Booker	Jones	Schatz
Brown	Kaine	Schumer
Cantwell	King	Shaheen
Cardin	Klobuchar	Sinema
Carper	Leahy	Smith
Casey	Lee	Stabenow
Collins	Manchin	Tester
Coons	Markey	Udall
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden

NAYS—51

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Isakson	Scott (FL)
Cornyn	Johnson	Scott (SC)
Cotton	Kennedy	Shelby
Cramer	Lankford	Sullivan
Crapo	McConnell	Thune
Cruz	McSally	Tillis
Daines	Moran	Toomey
Enzi	Murkowski	Wicker
Ernst	Paul	Young

NOT VOTING—1

Harris

The PRESIDING OFFICER. The Senate overrules the decision of the Chair.

The Senator from Missouri.

Mr. BLUNT. Mr. President, in the last vote today we established a new precedent. The rules of the Senate are a combination of the rules of the Senate, the standing orders of the Senate, and the precedents of the Senate. Senator LANKFORD and I had hoped to do this with a permanent standing order that basically would have put the Senate exactly where the bipartisan vote was in 2013, which included my vote, to have the same kind of rules that we are encouraging now. This process is designed to speed up not only nominees for Republican Presidents but also nominees for Presidents who are Democrats.

In the last 2 years, we have seen an extraordinary use of every tool available to the minority. The Senate is designed to be a place where the minority is heard. In fact, at one time, any Senator could stop everything forever, and when Senators started doing that to excess, that rule was changed. The protections of the minority often have to be looked at again when the minority abuses those protections. That is what has happened in this case.

Now we have 2 hours of debate on the nominee we are debating right now. If we hadn't just taken the vote we took that overruled the Chair, we would have 30 hours of debate. I guarantee that there will not be 2 hours of debate about this nominee. There may not be 2 minutes of debate about this nominee if we see what we have seen happened in the last 2 years.

The rules of the Senate currently say that if any Senator wants to hold up consideration of a nominee, then, the Senator can insist that we go through the process of invoking cloture. In the first 2 years of the Obama administration, that process was used 12 times, and that was more than had been the case in the past. In fact, the previous 3 Presidents had cloture invoked on their nominees a total of 12 times. That is 24 times in 4 Presidencies. In the first 2 years of President Trump's time in office, the majority leader had to come to the floor 128 times and say we are going to have to invoke cloture to have a chance to vote on this nominee.

It is the first week of April. Eleven times this year already the Senate has had to invoke cloture on a nominee for a government job—for a judgeship or some other government job. While that debate time was seldom used, occasionally, at the end of the week, we would say: Well, OK, we will just go ahead and do the last one. Each time, we had to assume that 30 hours would be used up for those people to be processed and to have a chance to do the jobs that they were going to do.

The history of the Senate is exactly as the majority leader described here earlier. In the first 200-plus years of the Senate, while the Senate often used a delaying tactic to delay legislation and require the Senate to think about it more, the Senate virtually never used the rules of the Senate to slow down the process of putting people in the Cabinet.

In fact, several Presidents—and Presidents in this century—had their full Cabinet put in place within the first day or two of their administration. That didn't happen with this President, and it is obviously what brought us to where we are today.

Usually, in the first couple of years of a new administration, the President not only gets his Cabinet approved right away, but the President is also able to put people around those Cabinet officers who want to move the government in the same direction that the voters just said they wanted the country to go.

The term of an administration is only 4 years. At the end of 2 years, if you are sending back 124 nominees who just simply didn't get voted on—they got investigated, they got the background checks done, they went through the committee, and the committee voted to send them to the floor—that was always supposed to be part of the work of the committee, and that happened for 124 people who never had a chance to get voted on in the first 2 years of this administration, many of whom had been waiting in line for a year.

Now, if you are appointed and have a short-term job in the Federal Government and are willing to serve, the one thing that does for sure is to put your life in some chaos—coming up with the material that the Congress insists on, going through the background check, and getting your financial records out. For most people, it also means putting the way they make a living on hold.

I had somebody whom I nominated as one of three people for the President to choose from to be the district judge in the Eastern District of Missouri. I made that nomination roughly 24 months ago. Twenty-two months ago, the President told the person he chose that he was going to nominate that person. Last November, after a year and a half of that person telling all his law clients, ''You know, I am about to become a Federal judge; you may need to find another lawyer,'' and after he closed his legal process, he hasn't been voted on yet. That man was one of the people sent back from the White House. He had to be sent back up this year and had to go through the Judiciary Committee again. He had to get back in a line, where every single person took 30 hours of debate, after the 1 day that had to be debatable between the time the leader brings you up and you come to the floor.

This sounds pretty complicated. That is because it is, and it is made more complicated by the fact that people have used it as a delaying tactic.

Now, as for the 128 people whom I mentioned—the 128 people whom the majority leader had to file cloture on—compared to 12, let's be sure we are comparing this the way this used to be,