

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 Senator 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 propound a unanimous consent at this time. 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, there would be 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 legislation?

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 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 entered into—questions propounded to a Senator through the Chair—not be deducted from the time allotted to that Senator.

Mr. WYDEN. I am very open to that. I think it is an excellent suggestion.

Mr. UDALL of New Mexico. I very much agree with that. I have been sitting here following the debate, and I think Senator ALEXANDER, among others, has propounded some very good questions. I actually have another question I was going to ask on top of his question of what is a filibuster. So I am looking forward to that portion of it. Senator HARKIN, thank you very much for that.

Mr. WYDEN. Madam President, I think Senator HARKIN has made 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, reserving the right to object, I have 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 presentations 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, Senators HARKIN and MERKLEY, 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. It prevents us from doing the job 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 restore its 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 ROBERTS. We have some very good 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 and the Republicans complain 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 on the filibuster—that the majority has to be able to govern. The way the filibuster is being used the minority thwarts 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 get 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 INOUE 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—that is 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 agree 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 1957. As he outlined, the Senate's right to determine its procedural rules derives from the Constitution itself and, therefore, "cannot 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 CORK-

ER 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, 1960s, and 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 Senates 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 when a supermajority is required to act. Therefore, any rule that prevents a majority in future Senates from being able to change or amend rules adopted in the past is unconstitutional.

The fact that we are bound by a supermajority requirement that was first established 93 years ago also violates the common law principle that one legislature cannot bind its successors.

This principle goes back hundreds of years and has been upheld by the Supreme Court on numerous occasions. This is not a radical concept. The constitutional option has a history dating back to 1917, and it has been a catalyst for bipartisan rules reform several times since then. The constitutional option is our chance to fix rules that are being abused—rules that have encouraged obstruction like none ever seen before in this Chamber.

Amending our rules will not, as some have contended, make the Senate no different than the House. While many conservatives claim that the Democrats are trying to abolish the filibuster, our resolution maintains the rule but addresses its abuse. But, more importantly, the filibuster was never part of the original Senate. The Founders made this body distinct from the House in many ways, but the filibuster is not one of them.

So here we are today on the first day of a new Congress offering a resolution to reform the Senate's rules. We don't intend to force a vote today; in fact, we hope that we can return from the break and spend some time on the floor debating our resolution, considering amendments to make it better, and debating other resolutions. This should not be a partisan exercise. I think almost every one of us who have spoken today have said that. We know both sides have abused the rules, and now it is time for us to work together to fix them.

But we believe the Senate of the 112th Congress has two paths from which to choose. There is the first path: We do nothing and just hope the spirit of bipartisanship and deliberation returns—the truth is we have been

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 parties.

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 nondebateable 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:

I have proposed a variety of improvements to Senate rules to achieve a more sensible balance, allowing the majority to function while still protecting minority rights. For example, I have supported eliminating debate on the motion to proceed to a matter . . . 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 a motion to proceed “makes the majority leader and the majority party the subject of the minority, subject to the control and the will of the minority.”

Despite the moderate change that Senator Byrd proposed—limiting debate on a motion to proceed to 30 minutes—it did not have the necessary 67 votes to overcome a filibuster.

At the time, Senator Byrd argued that a new Senate should not be bound by that rule, stating:

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.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. UDALL of New Mexico. Madam President, I ask unanimous consent for another 2 minutes—also recognizing the Republican side has speakers—to wrap up.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. UDALL of New Mexico. Madam President, efforts to reform the motion to proceed have continued since. 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-vice 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. Each time 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 provides a simple solution, guaranteeing the minority the right to offer amendments.

The fourth provision in the resolution, which Senator MERKLEY will cover extensively, is regarding the talking filibuster. We want to replace a silent filibuster with a talking filibuster.

Finally, our resolution reduces postcloture time on nominations from 30 hours to 1. Postcloture time is meant for debating and voting on amendments—something that is not possible on nominations.

Instead, the minority now requires the Senate use this time simply to 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 badly needed. We have a responsibility to the Constitution and to the American people to come together and fix the Senate. We were sent to Washington to tackle the Nation's problems. But we find that the biggest problem to tackle is Washington itself.

With that, I ask unanimous consent that an editorial on the filibuster that appeared in the Washington Post, and an op-ed piece in the New York Times by Walter Mondale be printed in the RECORD.

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

[From the New York Times, Jan. 2, 2011]

#### REFORM AND THE FILIBUSTER

The new Senate will face one of its most momentous decisions in its opening hours on Wednesday: a vote on whether to change its rules to prohibit the widespread abuse of the filibuster. Americans are fed up with Washington gridlock. The Senate should seize the opportunity.

A filibuster—the catchall term for delaying or blocking a majority vote on a bill by lengthy debate or other procedures—remains a valuable tool for ensuring that a minority of senators cannot be steamrolled into silence. No one is talking about ending the practice.

Every returning Democratic senator, though, has signed a letter demanding an end to the almost automatic way the filibuster has been used in recent years. By simply raising an anonymous objection, senators can trigger a 60-vote supermajority for virtually every piece of legislation. The time has come to make senators work for their filibusters, and justify them to the public.

Critics will say that it is self-serving for Democrats to propose these reforms now, when they face a larger and more restive Republican minority. The facts of the growing procedural abuse are clearly on their side. In the last two Congressional terms, Republicans have brought 275 filibusters that Democrats have been forced to try to break. That is by far the highest number in Congressional history, and more than twice the amount in the previous two terms.

These filibusters are the reason there was no budget passed this year, and why as many as 125 nominees to executive branch positions and 48 judicial nominations were never brought to a vote. They have produced public policy that we strongly opposed, most recently preserving the tax cuts for the rich, but even bipartisan measures like the food safety bill are routinely filibustered and delayed.

The key is to find a way to ensure that any minority party—and the Democrats could find themselves there again—has leverage in the Senate without grinding every bill to an automatic halt. The most thoughtful proposal to do so was developed by Senator Jeff Merkley of Oregon, along with Tom Udall of New Mexico and a few other freshmen. It would make these major changes:

#### NO LAZY FILIBUSTERS

At least 10 senators would have to file a filibuster petition, and members would have to speak continuously on the floor to keep the filibuster going. To ensure the seriousness of the attempt, the requirements would grow each day: five senators would have to hold the floor for the first day, 10 the second day, etc. Those conducting the filibuster would thus have to make their case on camera. (A cloture vote of 60 senators would still be required to break the blockade.)

#### FEWER BITES OF THE APPLE

Republicans now routinely filibuster not only the final vote on a bill, but the initial motion to even debate it, as well as amendments and votes on conference committees. Breaking each of these filibusters adds days or weeks to every bill. The plan would limit filibusters to the actual passage of a bill.

#### MINORITY AMENDMENTS

HARRY REID, the majority leader, frequently prevents Republicans from offering amendments because he fears they will lead to more opportunities to filibuster. Republicans say they mount filibusters because they are precluded from offering amendments. This situation would be resolved by allowing a fixed number of amendments from each side on a bill, followed by a fixed amount of debate on each one.

Changing these rules could be done by a simple majority of senators, but only on the first day of the session. Republicans have said that ramming through such a measure would reduce what little comity remains in the chamber.

Nonetheless, the fear of such a vote has led Republican leaders to negotiate privately with Democrats in search 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 fall short. The Senate has been crippled long enough.

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

RESOLVED: FIX THE FILIBUSTER

(By Walter F. Mondale)

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 moderate change would preserve debate and deliberation while avoiding paralysis, and for a while it did.

But it's now clear that our reform was insufficient for today's more partisan, increasingly gridlocked Senate. In 2011, Senators should pull back the curtain on Senate obstruction and once again amend the filibuster rules.

Reducing the number of votes to end a filibuster, perhaps to 55, is one option. Requiring a filibustering senator to actually speak on the Senate floor for the duration of a filibuster would also help. So, too, would reforms that bring greater transparency—like eliminating the secret “holds” that allow senators to block debate anonymously.

Our country faces major challenges—budget deficits, high unemployment and two wars, to name just a few—and needs a functioning legislative branch to address these pressing issues. Certainly some significant legislation passed in the last two years, but too much else fell by the wayside. The Senate never even considered some appropriations and authorization bills, and failed to settle on a federal budget for all of next year. Votes on this sort of legislation used to be routine, but with the new frequency of the filibuster, a supermajority is needed to pass almost anything. As a result the Senate is arguably more dysfunctional than at any time in recent history.

People give lots of reasons for not reforming the filibuster. The minority often claims that it needs the filibuster to ensure that its voice is heard, even though the filibuster is now used to prevent debate from ever beginning. What really gets me, though, is when opponents to reform point to the provision left in Rule 22 after 1975 saying that the Senate cannot change any of its rules without a two-thirds supermajority to end debate.

This requirement cannot constrain any future Senate. A long-standing principle of common law holds that one legislature cannot bind its successors. If changing Senate rules really required a two-thirds supermajority, it would effectively prevent a simple majority of any Senate from ever amending its own rules, which would be unconstitutional. Article I, Section 5 of the Constitution states: “Each House may determine the rules of its proceedings.” The document is very explicit about the few instances where a supermajority vote is needed—and changing the Senate's procedural rules is not among them. In all other instances it must be as-

sumed that the Constitution requires only a majority vote.

In other words, the fact that one Senate, decades ago, passed the two-thirds majority rule does not mean that all future Senates are bound by it. This year's new Senate could use this “constitutional option” to force a vote on any change to Senate rules, including Rule 22, and change them with a simple majority.

At the very opening of Congress in 1975, my colleagues and I announced our proposal to amend Rule 22, and threatened to force a majority vote to end a filibuster on the change if the minority tried to block it. In the end, we reached the 60-vote compromise, and never had to use the constitutional option after all. A similar strategy would likely work today.

Tom Udall, Democrat of New Mexico, has said that in a few days, at the beginning of the 112th Congress, he will call on the Senate to exercise its constitutional right to change its rules of procedure, including Rule 22, by a simple majority vote. I wholeheartedly support his effort and encourage both Democrats and Republicans to cooperate with him. The filibuster need not 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 passionate piece in the New York Times 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 Presiding Officer now, as well as Senator COLLINS, in this effort. It is the only bipartisan issue before the Senate this particular day. I emphasize 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 onboard 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 this Senator 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 change any rights of any individual Senator. This is simply about transparency, and with transparency you get a great deal of accountability.

I wish to be very clear that I fully support the fundamental 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 most Senators spend most of their time off 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 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 the substance 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 most conscientious about 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 majority or minority leader to recognize 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. Since the leader 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 rights 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 a 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 Senator from Oregon.

Mr. MERKLEY. 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 just a couple weeks ago, and that was an impeachment trial of a judge. The magic began because the cameras were turned off. Senators were not speaking to the camera; they were speaking to each other. Second, they were required to be on the floor, so they were required to listen to each other. After all the evidence had been presented, Senators started to engage back and forth about their interpreta-

tions of the evidence, about the standards that would constitute grounds for conviction. One would not have been able to tell who was a Republican or who was a Democrat. We had a real debate, but it took 2 years to have that first debate. Then we had a debate over the START treaty. That was a pretty good debate too. That also happened just a couple weeks ago. For the balance of 2 years, there has virtually never been a serious debate on this floor with Senators hearing each other out, listening to each other, considering the pros and cons, addressing each other's amendments.

That is a tremendously different Senate from the Senate I first witnessed when I came here as a young man, as an intern for Senator Hatfield in 1976. I was up in the staff section. I would come down to meet Senator Hatfield on a particular tax reform bill that had a series of amendments. I would brief him on the amendment that was being debated. He would come in, talk it over with folks, and vote. An hour later, there would be another vote, and an hour later, another vote, with debate in between, back and forth, with enormous respect and courtesy among the Members to the principle of the Senate being a body of deliberation, a body of debate. But today, that respect is gone. The most visible sign of the decrease in the mutual accord has been the abuse of the filibuster.

"Filibuster" is a common term we use for a decision to oppose the termination of debate and oppose voting with a straight majority as envisioned in the Constitution. That starts from a principle of mutual respect, that is, as long as any individual has an opinion that bears on the issue at hand, that Senator should be able to express that opinion and we as a body should be able to hear it. Out of that would come a better policymaking process. Unfortunately, over time, that mutual respect has been yielded more and more as an instrument of obstruction because each time a Senator objects to a simple majority vote, under the rules they create a 1-week delay and a supermajority hurdle. If one objects 50 times a year, they have wiped out every single week of the year.

This chart gives some indication of how grossly the principle of mutual respect and debate has been corrupted and abused.

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 absorbs 1 week of the Senate's time, one can see how this has been used to essentially run out the clock and obstruct the very dialog on

which the Senate would like to pride itself.

There is a statement about the Senate: the world's greatest deliberative body. But today in the modern Senate, that incredible tribute to this Chamber has been turned into an exclamation of despair. Where did that deliberative body go—not only not the greatest deliberative body but virtually devoid of deliberation due to this abuse. We went from mutual respect to essentially mutual legislative destruction using this filibuster.

In 2010, this last year past, not a single appropriations bill passed. We have a huge backlog of nominations. Our role of advice and consent has been turned into obstruct and delay in terms of nominations for the executive branch and the judiciary. We have a constitutional responsibility to express our opinion, but this body, by using the filibuster, has prevented Senators from advising and consenting, either approving or disapproving these nominations. It certainly is terrible to have our responsibilities as a legislature damaged, but not only have we done that, we have proceeded to damage the executive branch and the legislative branch—quite an intrusion on the balance of powers envisioned in our Constitution. Then we have the hundreds of House bills that are collecting dust on the floor because they cannot get to this Chamber because of this abuse.

All of this needs to change. When I first came here in the 1970s, when there was a challenge in 1975, there was a huge debate, and it resulted in changing the level required to overcome the filibuster from 67 Senators to 60 Senators. Yet in 1973 and 1974, the 2 years that preceded, there was only an average of 22 filibusters a year, not 68. We have more than tripled the dysfunction that led to the last rules debate.

That is why we are here today—to find a path forward. There are so many who have been so instrumental in this debate. So many Members of the class of 2006, 2008, and now Members of 2010 are engaged in this effort. My hat goes off to Senator SCHUMER for leading the hearings in the Rules Committee and trying to find that balance between every Senator's right 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

playing the role of Jefferson Smith, who comes to this Chamber where I now stand and says: I will take this floor to oppose the abuses that otherwise might go forward, and he held that floor until he collapsed.

That is what the American people believe a filibuster is all about. You want to make your case before the American people. But today we don't have a talking filibuster in the Senate. 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 and, 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 colleague 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 from the other side. This is an issue of concern from both sides. This proposal addresses that and says there will be a guaranteed set of amendments that the minority leader can pick from among the minority members and a guaranteed set of amendments the majority leader can pick from among the majority members, but we get the process of amendments going.

If they want to have unanimous consent to increase that number to a higher level, get more for the minority or the majority side, that would be terrific, but at least they can't say no amendments. No leader can block the principle that each side has the opportunity to amend.

The third point is on nominations. Right now, we have this huge backlog. This resolution makes a modest change in nominations. It says the period following cloture will be reduced from 30 hours to 2 hours. We have already had the debate over the individual, let's have the vote. That is what that says. This means Senators will be less tempted to use the filibuster on nominations as an instrument to delay and obstruct the Senate. It is not a completely pure reform but a step forward in the right direction.

Our fourth is the ban on secret holds. Senator GRASSLEY has spoken to this, and Senator WYDEN will speak to it. Senator MCCASKILL has joined with them and others, and I believe at one time point there were as many as 70 Senators expressing in a letter their support to get rid of the secret hold. Anyone who wants to hold up legislation should have to stand on this floor and present their objection to this Chamber, to their colleagues, and to the American people.

When folks have to take a position on this floor, whether it be through the talking filibuster or through publicly announced holds, then the American public can weigh in. Then you are taking the business out of the back rooms and onto the floor of this Chamber and American citizens can say: You are a hero for your actions or you are a bum for what you are doing.

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 proceeding 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 each 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 these are modest steps but 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 that 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 is 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 Senator WYDEN, for his comments.

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, and said: Senator Byrd, I am suddenly 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 1967 as 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 and amend the bill. The Senator from Oregon is talking about no debates occurring today. Well, of course there are no debates, because when Republicans

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. They are calling a filibuster a cutoff. It wouldn't be 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 go back to what our goal should be. Senators Byrd or Baker would say: OK. The Energy bill or the education bill is up, everybody get their amendments in. They might get 300 amendments filed. At some point, the majority leader would say: I ask unanimous consent that the amendments be cut off. Of course, they would get that after a while because everybody had all the amendments in that they could think of.

You didn't go to the majority leader down on your knees and say: Mr. Majority Leader, may I please offer this amendment or that amendment. You just put your amendment out there, and then they started voting.

Then Senators Byrd and Baker did something else we don't do today, which is why I am talking about using the rules before we change the rules. They debated, they voted; they debated, they voted; they voted; they debated, they voted. Of course, 300 amendments are a lot of amendments to get through. So the leaders and the staff would say to the Senator from North Carolina or the Senator from Oregon: Are you sure you want 25 amendments? It is Wednesday night. No, 10 will be enough. On Thursday night they might say: Are you sure you want these five amendments? It is Thursday night. We are going to be here Friday, and we are going to finish this bill. We will be here Saturday if we have to be, and we will be here Sunday. You are going to get your amendments, and we are going to 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 here to repeal the health care law, the 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 would often tell 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 the right to debate and 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 Republicans and I think we 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 comment 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 Republican support and Democratic support for it. Maybe this is the time to deal with secret holds. I make my holds public. When I was nominated for the U.S. Education Secretary by President Bush, the Senator from Ohio held me up for 3 months and never said why. I went around to see the Senator Rudman from New Hampshire and asked him what to do. He said when he was nominated by President Ford to the Federal Communications Commission, the Senator from New Hampshire held him up. Finally Rudman withdrew his name and ran for the Senate against the Senator and beat him. That is how Senator Rudman got in the Senate. Secret holds is an area that has had a lot of work and bipartisan support.

The right to offer amendments—the problem I have with altering the current rules is that offering amendments is what we do. I went to see Johnny Cash one time in the 1980s, and I asked him a dumb question, I said: Johnny, how many nights are you on the road? He said: Oh, 200. I said: Why do you do that? He said: That is what I do. If you

are on the Grand Ole Opry, you sing. If you are in the Senate, you offer amendments and you debate. That is what we do, that is what we are supposed to do. Yet we have not been allowed to do it.

Talking filibusters—if we are talking about the postcloture period, the problem with that is the majority has not used the rules. If I object to going forward with a bill, the majority, if they think I am abusing the rules, can say OK, Senator ALEXANDER, get down there on the floor because we are going to be here all night. And you can only get 7 hours and then you have to line up 23 other Senators to take 1 hour each, and if you stop talking we are going to put the question to a vote. If you do a number of certain other things we are going to make a dilatory motion. In other words, the majority can make it really hard for a Senator who objects.

Someone said one, two, three, or four Senators can hold this place up. They cannot hold it up. Because if you have 60 votes you can pass anything. If you have 60 votes you can pass anything and Senator Byrd said in his last testimony before the Rules Committee that you can confront a filibuster by using the rules.

The last two things we could do are, No. 1, we could stop complaining about voting. It happens on the Republican side and the Democratic side. If somebody offers an amendment that is controversial and everybody runs up to the leader and says we don't want to vote on that, then too bad. We are here to vote. That is why we are here so we should do that.

The third thing we can do, and Senator Byrd suggested this in his last testimony, is let's get rid of the 3-day work week. There is not enough time for all the Senators to offer their amendments and there is not enough time for the majority to confront the minority if they think the filibuster is being abused if we have a 3-day work week, and we never vote on Friday. We did not vote on Friday one time last year.

Let's use the rules. If you think we are holding something up improperly, confront that Senator. Run over him. You can do it. You have the power to do it if you have 60 votes. In this new Congress there will be plenty of opportunities there.

Finally I am going to take these five suggestions and work with Senator SCHUMER and work with my friends on the other side. They are very thoughtful. Senator UDALL spent a lot of time on this, Senator WYDEN and Senator GRASSLEY spent 15 years. Senator MERKLEY used to be a speaker. We have talked a number of times. I greatly respect his work in his State and the fact that he has seen the Senate for a long period of time. I am taking very seriously everything that is said here. I am just worried about turning the Senate into the House.

We have a majoritarian organization over there. They can repeal the health

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.

When we get a consensus we 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 a part of our 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.

I yield the floor.

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-Grassley-McCaskill-Collins resolution to end secret holds, which is at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. ALEXANDER. Madam President, reserving 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 deep-sixing secrecy, that we were saying public business ought to be done in public. I wish it were being done today but I understand completely the senti-

ments 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. What I hope will be done—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 around an extraordinarily important change in the Senate procedures that Senator GRASSLEY and I have been trying to change for literally 15 years. Particularly with the energy and enthusiasm Senator MCCASKILL 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 hair spray. 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 powers an individual Senator has here in the Senate and it can be exercised without any transparency and without any accountability whatsoever. What a secret hold is all about is one Senator can block the American people, the entire country, from learning about 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 just common sense. Most people say, when you tell them that a Senator can block an enormously important piece of legislation or a nomination that affects millions of people and they can do it in secret, I can't believe you have those kinds of rules.

The fact is, that is the way the Senate operates. Suffice it to say it is getting worse. A few days ago, for example, Chief Justice Roberts said that the number of vacancies on our courts is creating a judicial emergency. Those are the words of Chief Justice Roberts.

At least 19 Federal judges have been approved by the Senate Judiciary Committee unanimously or near unanimously and never got a vote on the floor of the Senate. Not one Senator has publicly taken responsibility for worsening the judicial crisis that Chief Justice Roberts has been decrying over the last few days. Think about that. The Chief Justice of the United States during the Christmas holidays included in his annual report on the Judiciary that the delay in confirming federal judges is creating an emergency in the judicial system.

Chief Justice Roberts, in my view, is correct. I think we do have an emergency. We have been trying to get several judges in the State of Oregon approved, Senator MERKLEY and I have been working to get this done. But these nominees and others have been blocked and no Member of the Senate will publicly take responsibility for worsening this crisis that Chief Justice Roberts is appropriately so concerned about.

We have tried in the past with legislation to end secret holds. We actually got a law passed at one time to get rid of secret holds. We have tried with pledges from the leadership of both political parties. In every instance, the defenders of secrecy have found their way around the requirements and, in my view, the public interest.

I will make two points and then I want to allow Senator MCCASKILL to have a chance to address this issue. There are two points with respect to why this effort to end secret holds would be different. The first is that every hold here in the Senate, after the passage of this bipartisan resolution, would have a public owner. Every single hold would have a public owner. Second, there would be consequences. In the past, there have not been consequences for the individual who would object anonymously. In fact, the individual who would object would usually send someone else out to do their objecting for them and there would be complete anonymity for, essentially, all concerned because the person who would be objecting would be in effect saying this is not my doing, I am doing it for somebody else.

The heart of this bipartisan compromise is to make sure that every hold has a public owner and there 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 business. 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 thought she might 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

that this was a place where people came to debate and to have a collegial relationship with fellow Senators across the aisle. There had been a lot of problems with ethical issues in the Capitol. So one of the first things that happened to the class of 2006 was S. 1, and S. 1 was a far-reaching ethics bill that included things such as no more free flights on corporate jets. It included new requirements in terms of gifts from lobbyists, and it also included a provision that I did not know at the time had been worked on by Senator WYDEN and Senator GRASSLEY for many years.

That provision said we were not going to have secret holds anymore. So imagine how great I felt on January 18, 2007, that we had done this comprehensive ethics bill that was going to clean up our act, and that we were not going to have secret holds. Well, I find it ironic that Senator ALEXANDER says: Well, just use the rules. Just use them.

Well, so when I started figuring out that the game around here in the last 18 months had developed into a game of secret holds, I asked my staff: Hey, did we not have something in S. 1 about secret holds? Not knowing really the relationship that language had to Senator WYDEN and Senator GRASSLEY.

So my staff pulled out the legislation and we looked at it. I said: Well, right here it says they cannot do it. So I began coming down to the floor and using the law.

I did exactly what Senator ALEXANDER recommended. I came down here and began making motion after motion, which under the language of that statute would seem to indicate all of the Senators supported—except for a handful—that once you made these motions people would have to come out of the shadows and claim their holds.

Well, that is when I discovered the people who voted for this, or a bunch of them, did not mean it. They did not mean it. It was window dressing. They were not sincere about ending secret holds because we discovered, when we started trying to use that language, some of the folks who voted for it were doing the old switcheroo. When they were called upon under the law to reveal their holds, they would just hand their hold off to someone else.

That is when I began getting frustrated with the games that were being played. I thank Senator WYDEN and Senator GRASSLEY and others who have worked on this, but I will tell you what is the most depressing thing I have heard today: that this is something that has been worked on for 15 years.

Now, seriously, think about that. We have allowed people to secretly hold nominations and the people's business, and there have been Members trying to clean it up for 15 years. We wonder why we are having trouble with our approval ratings.

Nothing is more hypocritical than all of the sanctimonious stuff I am hearing down the hall about the new era, no more business as usual, no more. We

are going to have accountability and transparency. But yet we seem to be embroiled, down at this end of the hall, with not even being able to get beyond a secret hold. This should not be hard; this should be easy.

Now, some of the other provisions that are being debated today, I understand there is concern about the power of the minority in the Senate. I think those concerns have been addressed in the resolution that has been presented by Senator MERKLEY and Senator UDALL and Senator HARKIN from Iowa.

But if we cannot get 67 votes to end secret holds and amend the rules, how seriously can we take anybody who claims they want accountability and transparency in government? I mean, this is the hall of fame of hypocrisy. This is not just hypocrisy, it is the hall of fame. So that is why I think we have to get busy and get the secret hold provision done.

I would like to see us get all of these reforms done. I wanted to spend a second on what Senator ALEXANDER's suggestion was. His suggestion was to use the rules. Well, honestly, does he think the way to solve this problem is to force the majority to stay here all night, with staff, spending the taxpayers' money to force someone over and over again to say, "I object"?

We cannot make the minority talk. So that means the majority, whether it is Democrats or Republicans, has to stay all night and call the question. They do not have to have—I mean, we could do live quorum calls, but that is what we need to do to make this place work? That is his suggestion, to force the people who are objecting and the staff and the people around here to stay here all night every night until someone breaks? That is a good idea?

I think that means someone has probably been around here too long. It does not sound like a good idea, that it is not a commonsense idea that we would be promoting on Main Street in Missouri. I think it makes more sense, if you are the minority and you want to block legislation that you own it. Just own it. Block it. That is what the Senate is about. The minority can continue to block legislation whether the Democrats are in the minority or the Republicans are in the minority. They can block all the legislation they want. They just have to own it. They have to be willing to say they are blocking this for the following reasons—because we think it is important—and let the people decide.

Same thing with holds. You want to hold something, hold it. But let the people decide whether you are being reasonable or whether you are—really what I was disgusted to learn is how many people were using secret holds. In fact, they brag about it. They are using secret holds to get something else. I am going to hold this nominee in this department because I want money for a community center in my town. If you do not give me money for a community center in my town, you cannot

get the Deputy Secretary of the Interior through. I mean, I am making up this example, but this was actually going on. It is like you secretly hold something so that you can get them to give you something else. That is the essence of the backroom dealing that people are disgusted with. Own it. Be proud of it. Defend it. Debate it. But do not hide it. That is what this is all about.

I thank all of my colleagues who have worked on this. I just want to close with this comment: Bad habits have consequences, and if we do not take this opportunity to fix what is going on in the Senate—this is not the way the Senate has operated for hundreds of years. If we do not change this path, then we are going to be on this path forever. And if the minority now does not think that when the time comes they may not be in the minority anymore, if we do not think we have not learned from them—seriously?

This place is going to be dysfunctional as far as the eye can see because they will fill the tree and we will just block everything. Then they will block everything and we will fill the tree. This is going to go on forever until there are enough people around here who are willing to set aside the political maneuvering and do what is right for the future of deliberations in a body that we all want to be proud of. But right now we cannot be so proud of the way we operate.

I thank the Senator from Oregon and all of the Senators who have worked on this issue. I hope we can pull back from the brink because that is where we are. We are about ready to institutionalize a way of operating around here that is not something that any of us should be proud of.

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.

Ms. KLOBUCHAR. 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 lameduck session, ensuring that taxes were not raised on the middle class during an economic downturn, ratifying the START treaty, among other things. We worked together to solve problems. This was not always the case during the last Congress. But we ended on a high note.

As our work begins today anew, we all know there is still a great deal of work to be done. We have a lot of work ahead of us to ensure that American workers can find jobs, to get our private sector economy back on track, to find long-term solutions to our mounting deficit. Because of the urgent business that is in front of us, I am hopeful

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—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 heard a lot from my friend 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 without identifying 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 one 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 stay 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.

Our current system is a far cry from Jimmy Stewart. That is why a group of us have been working to get some legislation passed to change the rules going forward. When you think about the history of the Senate—and I listened with great respect as my colleagues talked about the tradition and the importance of the rules of the Senate, about protecting the rules of the minority. None of these proposals will interfere with the rights of the minority to filibuster any piece of legislation.

But when you look at the history of the Senate, it is about tradition. As time goes forward, there have been changes to the Senate rules. Every few decades there are changes to the Senate rules. Look at my former colleague, Vice President Mondale, a great leader who made significant changes to the Senate rules.

This is all about transparency and accountability. I urge my colleagues to support this resolution.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE.) The Senator from Oregon.

Mr. WYDEN. Mr. President, I do not see any of our colleagues who want to speak on the bipartisan efforts to end secret holds, so let me make a couple of comments in wrapping up.

The first is, Senator GRASSLEY and I and others who have been at this for so long have been willing in the past to just put a statement in the CONGRESSIONAL RECORD when, in the handful of instances, we thought it was important to block a particular piece of legislation or a nomination. We felt it was important to be publicly accountable.

All we are asking is that principle of openness, transparency, and government in the sunshine apply to all Members of the Senate.

The fact is, secrecy has real consequences. I mentioned the fact that Chief Justice Roberts has been so concerned about the judicial emergency he has seen develop in the court system. I saw during the lameduck session, on a bipartisan bill Senator CORNYN and I spent many months on to combat sex trafficking, the consequences of a secret hold. When our bill passed the Senate, it went over to the House of Representatives, was passed in the House, and then came back to the Senate and was blocked secretly. And this was a bipartisan bill to allow us to strengthen the tools law enforcement would have in order to fight sex trafficking, to provide urgently needed shelters to sex trafficking victims. A bipartisan bill Senator CORNYN and I spent many months on did not become law during the lameduck session because of a secret hold.

A lot of Senators have seen exactly these kinds of problems with judges and U.S. attorney candidates. We had both from my home State, two judges who couldn't be considered because of a hold and we could not identify who was objecting, the same with the U.S. attorney nominee. These are the real consequences of secret holds.

The big winners in these secret holds are the lobbyists. The lobbyists benefit tremendously from secret holds. Practically every Senator has received requests from a lobbyist asking if the Senator would put a secret hold on a bill or a nomination in order to kill it without getting any public debate and without the lobbyist's fingerprints appearing anywhere. If you can get a Senator to go out and put an anonymous hold on a bill, you have then hit the lobbyist jackpot. No lobbyist can win more significantly than by getting a Senator to secretly object because the Senator is protected by the cloak of anonymity, but so is the lobbyist. With a secret hold, Senators can play both sides of the street. They can give a lobbyist a victory for their clients without alienating potential or future clients.

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 how to reform the rules of the Senate. What I think has come to light is, it doesn't pass the smell test to keep arguing 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. MURRAY. 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 rescinded.

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 Senate rules reform—I want to respond to Senator ALEXANDER because Senator ALEXANDER raised some questions, and some of those questions were not answered 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 debate, what is a filibuster? Well, all of us know and we have heard in this debate 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 example of a true 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-lynching 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 the 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, where he 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 description of what a filibuster is.

But what I think the real question is—and I would like Senator ALEXANDER, when he returns, to answer this—is, What impact has 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 filibuster"? Well, actually we have been talking about it 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 Committee. They produce a bipartisan result 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. So that is one specific case of the threat of a filibuster. And we have these all the time.

One of the ones that is the most remarkable to me—and I am not going to pick out the Senator or the exact committee—but a number of us, as Senators, saw a stack of bills, a stack of legislation that had come out, on a bipartisan basis, from one of our committees that was very thick, and it was legislation from 2 years—2 years—of that committee legislating in a bipartisan way, and those Democrats and Republicans working together and doing the hard work, and one Senator—one Senator—held up all of that legislation this last Congress, held it up completely.

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—whom we do not even know; 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 filibuster is. But that is an agreement that none of us knows about. So the threat of a filibuster has had an enormous 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 Secretary of the Interior. I was a kid. I remember 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 said: TOM, I had my whole team in place 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 percent 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 appalling because we believe if you put people in place, they will be responsive to citizens on the particular issues of those departments. So that is very important, I believe, getting executive nominations in place. So that is what the threat of a filibuster ends up doing.

I see my colleague from Mississippi, and I do not know whether he is going to step in for Mr. ALEXANDER and ask questions. We are in this questioning back and forth period. Senator HARKIN may want to say something on the question issue here too. What impact has the threat of a filibuster had?

We can hear the argument—Senator ALEXANDER has made this a number of times—look at all the great things you accomplished in the lameduck and look at all the great things you feel you accomplished in terms of health care, the stimulus package, and financial reform. But the reality is, in order to accomplish those in the constant filibuster we were in, we have basically destroyed our institution. As some of the more senior Senators here have told me, the Senate is kind of a shadow of itself.

What I do mean: "We have destroyed the institution"? Well, it used to be that our big oversight function was to look over the money bills for the government, the appropriations bills. Guess what. Last year we did not do a single appropriations bill on the floor of the Senate. You do not have to go back very far when we used to bring all 12 of those bills to the floor, and we would have 2 or 3 days of lively debate. Every Senator could put in amendments.

Senator HARKIN knows because he is one of the cardinals, he is the chairman of one of these committees. It is a very helpful process, one for the agency to know that all Senators are overlooking that agency, and for a person in Senator HARKIN's position, as the chair of the committee, to know what the concern of the entire body is. But we have given that up. We do not do that anymore, and it is because of the constant filibuster and the threat of filibuster. So you have that situation.

I would think my friend from Mississippi, the Senator from Mississippi,

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. HARKIN. Mr. President, 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, what has a filibuster become, because as the Senator pointed out and as Senator MERKLEY pointed out, this whole image of someone standing on the floor and speaking until they drop such as Senator D'Amato or Senator Thurman back in the old days on the civil rights bills or even Senator SANDERS a few weeks ago, that is not really a filibuster any longer. So what has a filibuster become?

Let me go back again a little bit in history. In the 19th century, in the 1800s, the filibuster was used, if I am not mistaken, about 20 times during that whole 100 years. But it was used under a different set of circumstances. In the 1800s, a Senator or a Congressman was elected in November, but the session of Congress lasted until March. The Senators or Congressmen elected in November actually did not take their seats here until a year and a month later, in December of the following year. So sometimes, in this "lameduck" session that ended in March, people in the majority party—especially if they had lost the election—would try to ram through a lot of stuff. The minority party would speak until the session ended in March so that nothing would get done, and then they would pick it up in December when the new Senate and House would meet. So it was a means of stopping onerous legislation for a short period of time.

That was in the 19th century. We have a different situation now. So the

filibuster is not used to speak now and to slow up one piece of legislation or to stop one piece of legislation; it is used to slow down everything. One case in point: We had before my committee last year a nominee by the name of Patricia Smith to be Solicitor General of the Department of Labor. We had our hearings, I say to my friend from Kansas who is not here right now. We had our hearings in committee. She answered questions, answered written questions. We reported her out of committee. We came here to the floor. We had to file cloture on Patricia Smith to be Solicitor of Labor, so we filed cloture. We got the 60 votes. But as we know, under postcloture you get 30 hours. Well, the minority forced us to use the 30 hours. Senator ENZI, our ranking member, came and spoke for 15 minutes and left, and I sat here for 30 hours and no one spoke. So for 29 hours and 45 minutes we sat here doing nothing, unable to do anything, on a nominee who had over 60 votes. At that time, the record will show, I kept asking: Why are we here?

Why are we using 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 down.

For example, nominees. We had nominees who got through here on a 99-to-0 vote after being held up for 6 months. Well, what if, I ask, we have to file cloture on every nominee and then every nominee has a vote on cloture 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 the question I might 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 then become the 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. I was here for his talk earlier, where the Senator led with the filibuster and laid it out and Senator ALEXANDER came back and asked these questions. I think the key question is the one the Senator just asked, which is: What has a filibuster become? The Senator seemed to be defending the old-fashioned filibuster that no longer exists. That is the situation we have.

Some of our friends on the other side—I hear them talk about this—are saying this is the filibuster of the past; it is a very pure thing and a wonderful thing. But it has been distorted, manipulated. The filibuster has been twisted in a way that it does exactly what the Senator is talking about—slowing everything down. It is an attempt, in a way, to defeat the majority from governing.

I think the Senator cited the Federalist Papers. One of the biggest dangers in a democracy is 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, which is kind of a hypocritical 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 know we don't have to take up 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 younger 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 small business, and they 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 because 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. So that means if these are unauthorized 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 an agency and you say: 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 of town, and that was the 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 get it done 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 filibuster become, 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 on those changes and 51 Senators—a majority—can vote those rules in, and we can fix the situation we have all been talking about here.

I think the Senator's question is the right one. The filibuster has become a procedural morass.

Mr. HARKIN. I thank my friend from New Mexico. I also thank him for his great leadership on the constitutional option. I am a cosponsor of his resolution, which he sent to the desk earlier today. He is right on target. The dead hand of the past cannot bind us. Every Congress, on the first legislative day—as Senator Byrd said himself in the past—has the authority, with 51 Senators, to set our rules—not two-thirds, just 51. We are on that first legislative day today.

I understand the leader will put us into recess so we will stay in the first legislative day when we come back. So we will be on this issue when we come back on January 25.

I wonder if I might explore a little bit with my friends who are here—and the Senator from Oregon has been a

great leader in this effort. As a former speaker of the legislature in Oregon, he has lent a great deal of expertise to our thinking and in evolving how we modify our rules to make this place function a little better. I thank Senator MERKLEY for his leadership. A lot of what was in the measure that Senator UDALL sent to the desk earlier today is what Senator MERKLEY has devised. These are things we need to do.

I ask again to bring this up here for maybe a brief discussion, if I might. This is something Senator CORNYN and I got into a little bit earlier. He went on at length about building consensus; that we want to build consensus and have bills over here with a consensus. Well, I agree with that. You try to get as much consensus as possible. Obviously, if you can get 100 Senators, that is nice—or 80 or 70. It is always nice to get as many as possible. I ask my friends, isn't it sometimes true that legislation comes up that can be contentious, and you can open it—I think it ought to be opened in the committee process for amendments. I pointed to the health care bill that we had in our HELP Committee, and the occupant of the chair was so vitally involved with that. We had 54 hours and 13 days of open markup and open session. No Senator was denied the opportunity to offer any amendment on that bill—Republicans or Democrats. Senator Dodd was chairing at the time. We adopted 161 Republican amendments. Imagine that, over 13 days, 161 Republican amendments. As I said, nobody was cut off.

Yet at end of that, when we finally brought it up for a vote, not one Republican voted for it, even though they had a big hand in shaping it. So whenever I hear comments that “we didn't have a hand in shaping the health care bill,” I don't understand that. I know in the Finance Committee Senator BAUCUS bent over backward to make sure Senators on both sides could offer amendments and be a part of the process. I say, if they don't want to vote for it in the end, fine; that is their right and privilege. People can vote their conscience and on behalf of their constituents. But we weren't able to get a consensus on it.

So if you have a bill on which you can't get a consensus, does that mean we should stop? As I asked the Senator from Texas, does that mean every bill has to have 60 votes? Is that what we have become—no bill will pass here unless it has 60 votes or more? The Senator from Texas pointed out, correctly, that some bills pass here by unanimous consent. Fine. That is 100 votes. So do they mean we have to have a minimum of 60 to 100 votes in order for anything to pass? What happened to majority rules? What happened to the idea that you only need 51 percent? Isn't that sort of the basis of a democratic government?

Again, I ask my friends about this idea of consensus. Yes, we all want to get that. We all want as many Senators

as possible on legislation, and we try hard to do that. But if that is not possible, does that mean that 53 or 54 or 55 or 56 Senators cannot then vote to pass a piece of legislation or an amendment?

I ask my friends, what about this idea of consensus? Have we come to where we have to have a super-majority? Is that the situation we are in now?

Mr. UDALL of New Mexico. The Senator from Iowa and my good friend, the Senator from Oregon, want to speak. The Senator mentioned—and I want to put this quote in the RECORD—the Senator from Texas, Mr. CORNYN, who came to the floor and talked today. One of the reasons I have a real belief that we might have some common ground is he was a judge before he came to the Senate. I think he was on the supreme court in the State of Texas. On this issue of the constitutional option, he wrote a law review article in the Harvard Journal of Law and Public Policy. The name of the article was “Our Broken Judicial Confirmation Process and the Need for Filibuster Reform.”

Listen to this. This is Senator JOHN CORNYN of Texas:

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.

He is basically driving home the point that we have the authority today, on the first day of the 112th Congress, the first legislative day, to pull together and take a hard look at the rules. The Senator from Iowa raised a very important issue on consensus. I am going to pass this off to Senator MERKLEY in this colloquy and let him answer that point. Maybe he may have another question.

I wish our friends on the other side of the aisle were here for this discussion. Senator ALEXANDER was here earlier. We had Senator WICKER. But nobody is here to answer the questions we are putting that way, but we are answering the ones this way.

Mr. HARKIN. Mr. President, hopefully, I say to my friend from New Mexico, when we come back on the 25th we will engage in more of this discussion.

I should yield the floor. I wanted to raise that question about consensus because it sounds so good, and we all love consensus. Of course we do. But sometimes we cannot get it. Does that mean then that the majority cannot act if they do not get consensus of over 60? Does that mean the majority simply cannot act?

Mr. President, I leave the question hanging and yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, continuing the conversation, my colleague from New Mexico pointed out the challenge with authorization bills. We

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 in the 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 continue—it is that 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 say, 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. 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 filibusters on legislation because the Democrats will not want to imperil their ability to obstruct the Republicans when the Republicans are in power someday.

Here we are, we are Democrats, and we are saying we are talking about rules that we have placed against the test of whether we can support these rules, whether in the majority or in the minority. The proposal we signed onto today—the five reforms we have laid out—we have run through the test of saying: Will this meet a fairness standard? Would this be fair if we were in the minority?

One of the proposals is to make sure the minority and the majority get to have amendments. That is a valuable protection for whichever party is in the minority.

Another piece of it is to say, yes, the filibuster can still be used. But you have to invest time and energy and make your case before the American people.

We have believed we can live with that in the minority. If we are going to

obstruct the Senate, we are willing to take this floor. We are willing to make our case. But we are saying a Senator should not be able to obstruct and hide. They should not be able to engage in the silent, the secret filibuster but should have to have the talking filibuster.

I applaud my colleague from Iowa, my colleague from New Mexico, and my colleagues who are about to speak—Senator MARK UDALL from Colorado—and say we have a couple weeks now in America to have a debate on the dysfunction and brokenness of the Senate. We are asking the American public to engage, to call your Senators, to share your concerns about a Senate that cannot do authorizations, that has not done appropriations, that leaves hundreds of House bills on the floor, and that cannot fulfill its constitutional responsibility to advise and consent on nominations, thereby undermining our other two branches of government.

This has to be addressed. That is why we are here.

The PRESIDING OFFICER (Mr. MANCHIN). The Senator from Iowa.

Mr. HARKIN. Mr. President, I thank the Senator from Oregon 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 rephrase the 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 minority 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 minority 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. How does that square with the principle of democratic government and majority rule?

I leave that out there: Should we have and continue to have, if we cannot reach a consensus, should we continue to have veto power by the minority?

I also see the Senator from Colorado here to speak.

I also want to publicly thank the Senator from New York who I see is about ready to speak, the chairman of our Rules Committee. Senator SCHUMER has spent so many hours and so many days this past year on this issue

of reforming the Senate rules. He was kind enough to let me testify before his committee and kind enough to actually let me sit with his committee to listen to others.

Senator SCHUMER has been in harness on this issue trying to get us to the point where we can have meaningful changes in the rules so that this place can function a little bit better and a little bit more democratically—with a small “d,” not democratically in terms of political affiliation.

I know in the next few weeks Senator SCHUMER is going to be very much involved as one on our leadership team, along with Senator REID and others, seeing what we can do to work things out so we can have a meaningful change in the rules.

Again, I am all for getting rid of secret holds, but that seems to be kind of a no-brainer. That would probably get close to 100 votes. But if that is all we are going to do, that is not a very meaningful change in the rules.

I submit that what Senator UDALL, Senator MERKLEY, and others have introduced, or I submitted myself going on for 15 years now, that is meaningful change in the rules. I know Senator SCHUMER is going to be very much involved in that discussion. I applaud him for his efforts and leadership. We will be back on January 25 to take up this cause again. I know I speak for my friend from Oregon that he is going to be here on the 25th, and my friend from New Mexico and everyone else. We are going to be here because we cannot let this go. We cannot permit the Senate to be so dysfunctional that we cannot respond to the urgent needs of America and our place in the world today. We cannot continue to go downhill as a country and cannot continue to let the Senate be a dumping ground and nothing ever gets done.

These rules need to be changed. We will be back on the 25th to do so. I thank my friend from Colorado for his indulgence.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. Mr. President, I ask unanimous consent that Senator SCHUMER be recognized after me for up to 15 minutes.

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

Mr. UDALL of Colorado. Mr. President, before I speak on the matter today, which the group of Senators today so eloquently and powerfully outlined for all of us, I want to acknowledge that the 111th Congress was one of the most productive in history. Legislation we passed will make real changes for American families who are struggling through a tough economy, as the Presiding Officer knows, and with rising health care costs. What we did also will make our military and Nation safe and stronger. We should be proud of the work we accomplished in the previous Congress.

But I have to also say that the last 2 years was a time of unprecedented obstruction and partisanship. If you do

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 Coloradans and Members of the Senate 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 we must be thoughtful about how we approach changes to the Senate rules.

Several years ago, Minister Robert Fulghum had everyone using the phrase, “everything I need to know I learned in kindergarten.” His essays made the point that the simple rules we teach children about getting along, about being kind to one another, about cleaning up after ourselves apply throughout life.

On one level, you could boil down the debate we are engaging in this week and say what we need are rules that will help us get along better in the Senate’s sandbox, and we need to talk with each other more and we need to listen even more than we talk. Why? Because the consequences, if we cannot 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 regions of the country. Home foreclosures are still expected to rise. Even more troubling is this fact: Americans are less optimistic about their 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 discourages investment 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 sidetracked 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 at a time.

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 I am again introducing a 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 to 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 are filibustering. 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 create an incentive to 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 cloture motion.

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, I 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, also named 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 ROBERTS 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 but 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 prescient 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 something 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 Senators from both parties who 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 an average of two 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 does business.

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 for months and months 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 unprecedented threat of a filibuster—not even 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 legislating, not less. Filibusters provide a minority of Senators a way to make their voices heard, but they should not provide a way for a minority of Senators or even a single Senator to grind the Senate to a halt regardless of whether they are Democrats, Republicans, or Independents.

Reform will engage the American people and reenergize this institution. This will not end the filibuster or cut off debate. On the contrary, it will pull back the curtain and show the American people what we actually believe and what our deliberations are really about.

There have been many ideas for reform presented by my colleagues that are worthy of discussion. The Senator from New Jersey, Mr. LAUTENBERG, testified before the Rules Committee about his plan, which he called the “Mr. Smith Goes to Washington” proposal. Senator MERKLEY, Senator UDALL, and others have developed their own versions of this important concept, which I call the talking filibuster. This talking filibuster idea would require filibustering Senators to keep speaking on the floor after cloture fails, to show clearly their wish to continue debate and to allow them to talk for as long as they wish.

Currently, the only evidence that a Senator is facing a filibuster is the vote on cloture. The Senate floor has evolved into a place where the majority assumes that each bill will be opposed and that little actual debate will occur on legislation. The rules require a vote of three-fifths of the Senators chosen and sworn to end debate on a matter or measure. The very question that is posed to the Senate in a cloture vote is, Is it the sense of the Senate that debate should be brought to a close? Those are the words. If it turns out that enough Senators answer that question: No, we want more debate, then those Senators should actually be required to debate. It is difficult to explain to the American people that the Senators who voted for additional debate are silent when then given that opportunity. If they want to debate, well, then let's debate.

One way we can guarantee fair and meaningful debate after Senators vote on cloture to continue debate—and cloture fails—the Senate remains on that measure and Senators must actually debate the bill. Senators may be recognized one after the other, as long as debate is continuous. If no more Senators seek to debate the issue, then the majority leader can move to close debate.

Obviously, there are technical things that have to be worked out—and we are working hard to do that—to make sure this proposal works and is viable. In the past, attempts at debate have been frustrated by quorum calls or unnecessary motions, all aimed at avoiding actual debate. If we change the rules to encourage extended debate after cloture fails, then the priority during this period will be to either debate the matter or 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 charades.

The majority will not choose to waste floor time on a matter the minority 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 the 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, there can be 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 all of them 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 issues of addressing 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, it is so ordered.

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 a reporter is up in the galleries and is describing the action down here on the Senate floor, is describing Jimmy Stewart—the Senator he represents engaging in the filibuster. The reporter describes the filibuster as “democracy's finest show . . . the right to talk your head off . . . the American privilege of free speech in its most dramatic form . . . one lone and single American holding the greatest floor in the land . . . bleary-eyed, voice gone.” That is what we think of when we think of the traditional Senate filibuster. In those days, you stood up and you filibustered against a bill because you were opposed to it, because you hated it, because on principle you wanted to stand and fight against it. That was the old filibuster.

Now when this Chamber is engaged in a filibuster, how does the American public know? When they are watching this floor on C-SPAN and they are looking for a filibuster, they don't see democracy's finest show, they don't see anybody talking their head off, they don't see the American privilege of free speech in its most dramatic form. What they see is a droning, tedious quorum call as the parliamentary staff read off, one by one, the names of Senators who are not present, and this Chamber stands useless during that period. Why is that? Partly it is because when Jimmy Stewart was undertaking his filibuster, he was exercising the right of an individual Senator to take this floor and to hold it and to speak. What is different is that when it is filibuster by party rather than filibuster by one individual Senator, then there is a whole array of procedural mechanisms the minority party has to provoke the majority leader to file for cloture.

Cloture is the filing that allows the majority leader to bring debate to a conclusion and to limit amendments. When cloture is filed, then there is 30 hours mandatory for debate. What has happened here is that the 30 hours mandatory for debate has become the prize, has become the goal of the modern filibuster. That explains why we are no longer filibustering bills we are opposed to when we are in the minority. The minority actually filibusters bills their Members support. They filibuster nominees who get voted through unanimously when the vote is finally held.

What is the filibuster about? It is about forcing cloture and forcing those 30-hour increments of time to be burned up. If you are filibustering the bill itself and you are filibustering the motion to proceed, you have a dual filibuster, and if you are filibustering amendments, you can load on an awful lot of 30-hour periods to the Senate floor and you can prevent anything from being done in those 30-hour peri-

ods just by sitting back and doing nothing and objecting when the majority party tries to move to the vote. All it takes is one person waiting in the cloakroom for the minority 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 we are doing 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 motion to 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 can come and talk your head off, 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 watch on C-SPAN with nothing 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 this 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 debate, 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 lone Senator back in the 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.

These 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 it 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 wasting time's sake but allowing 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, and that is the mission 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 trouper, 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 been through 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 public's needs. 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 to help jobless 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 disguise 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 take place.

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.

That is why I reintroduced 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, Senators simply object 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? How 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 will make lawmaking more transparent 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 stalemate.

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 recession. 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 pictures 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 out of the Army and was afforded 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 employes 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 wound up going to Columbia University, 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 cute an idea might be, 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 multiple millions, and they say: Mr. Senator, help us. Be there to help us now. We are not looking for charity. We are looking for 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 or those who read 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 disguise 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 my 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 considered 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 watch C-SPAN all the 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 economic situation that someone is paying 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 weary 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 several 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, and that is why we are here with this discussion this evening. I thank the Senators who have been involved, including Senator LAUTENBERG.

One of the things that surprised me when I first came to the Senate, I heard this was the world's most deliberative body. This was the place to come to debate the big issues. Today when there was a swearing in of the Senator from North Carolina, one of his predecessors was here, Senator Lauch Faircloth. He was the first Senator I faced off with on the floor over an issue when I was elected 14 years ago. It was an issue involving tobacco which I had been following pretty closely in my congressional career, and he was from the State of North Carolina where tobacco is a big issue. He didn't like my amendment, and he came to the floor. I was offering my first amendment. There was a lady who worked in the Senate named Lula Davis. I had served in the House for 14 years, but I didn't quite know the Senate procedures as well.

I said to her: How much time do I have?

She said: You have 1 hour.

I said: Is that equally divided?

She said: No, Senator, you have 1 hour.

House Members don't get an hour for anything. Five minutes is the usual course, 15 minutes if it is a great deal or if they want to stick around until midnight, they might get a special order for an hour.

Here I was with an hour on the Senate floor to debate my amendment. Senator Faircloth sat on the other side. I stumbled through it. I asked unanimous consent to allow the time to be equally divided between myself and Senator Faircloth so we could debate the amendment. I thought that

was fairly reasonable. Senator Faircloth said: I object.

I was stunned. Clearly, here I am with my amendment being as fair as can be, and he is not interested in the debate.

I am not going to pick on him because he reflected the feelings of many Senators here: that they are here on the floor to give speeches, many of them written by very talented staff people, and then leave the floor and go off and do something else. There is very little debate on the floor of the Senate, real debate. I could count on one hand the times I have in 14 years engaged another colleague in an actual debate that went back and forth over the merits of an issue.

One of the things we are discussing tonight is what to do with the rules of the Senate so we engage in more debate—we need it—so that we have less time that is being wasted in the Senate, fewer hours that are being ticked off a clock to reach 30 hours or whatever it happens to be on a cloture motion, and more actual debate so Senators with differing points of view can state their points of view and debate them back and forth and other Senators can then listen, certainly the public can listen and those in the gallery and can decide who has the merits of the debate.

Debate isn't something we should shy away from. It is an important part of the Senate that we should value and that we should honor to make sure the rules create that opportunity.

The Presiding Officer from the State of Oregon has suggested, along with others, that we have more debate and more votes. I think we should. For a time there was this feeling that we had to protect Members of the Senate from controversial votes. That is behind a lot of the decisionmaking that has taken place and brought us to this moment in the history of the Senate.

Perhaps I have a different view of it. But having been on Capitol Hill for a long time in the House and the Senate, I have stacked up many controversial votes, tens of thousands of them. It will be fair game. For any political opponent ever running against me in the future, there is plenty to work with. I don't need to give them something new to beat me over the head with. I have plenty of votes in my past. I think I can defend them for the most part, and I am prepared to do so. I am not afraid of tomorrow's controversial vote. In fact, I think it is part of why we are here.

There was a man who served here many years ago from Oklahoma, Mike Synar of Muskogee. He was one of my closest friends. Synar was an unusual character in the House. He was one who, faced with the choice between taking an easy, noncontroversial way out or a controversial, confrontational approach, would always choose the confrontational approach. He would walk right into the wall of fire and welcome it because he thought it was part

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 fires, 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 some of 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, and others 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 making these germane and 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 and 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 cloture. 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 and unusual thing to do, to 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 and considered 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 will 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 tossed it out as a standard. Sixty votes 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. Just in the last 3 weeks, 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 commonplace for anything that anyone wants to brand as controversial 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 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 charged that was 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, and I think it is not unfair to say to 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 because you happen to 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 we are addressing today as 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 to run, 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, forcing the Senate to stay in session until Saturday, when in the afternoon the time expired and a vote was called. The Senator who objected didn't show up. He wasn't there. We asked where he was. He had to go to a wedding. Really? The rest of us stayed here and waited 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? As 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 invested 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 recognize. When Chief Justice Roberts 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 judges. Currently, we have three 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 civil calendar because of three vacancies.

Two of those vacancies the President nominated judges to fill. The judges

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 up for 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, though 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 of whether it was 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 each and 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 "Akaka" 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 side: You are going to face some 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, let me first say to our majority whip, Mr. DURBIN of Illinois, that I very much appreciate his long-term effort in looking at rules. I know he signed on to several proposals today. I know he is on the one Senator MERKLEY and I are on, and he is also on the Harkin proposal.

The Senator was here back in those days, and he has seen how much the Senate has changed. So we really appreciate the Senator's contribution to this effort and the remarkable job he has 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 Packer, who is a writer with the New Yorker magazine. He 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.

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 Norm Ornstein. Norm wrote—this was also mentioned in the course of the debate by one of the Senators—and Norm wrote a piece in the New York Times called "A Filibuster Fix." That was on August 27, 2010. I ask unanimous consent that article be printed in the RECORD.

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

[From the New York Times, Aug. 27, 2010]

A FILIBUSTER FIX

(By Norman Ornstein)

WASHINGTON.—After months of debate, Senate Democrats this summer broke a Republican filibuster against a bill to extend unemployment benefits. But the Republicans insisted on applying a technicality in the Senate rules that allowed for 30 more hours of floor time after a successful vote to end debate. As a result, the bill—with its desperately needed and overdue benefits for more than 2 million unemployed Americans—was pointlessly delayed a few days more.

The Senate, once the place for slow and careful deliberation, has been overtaken by a

culture of obstructionism. The filibuster, once rare, is now so common that it has inverted majority rule, allowing the minority party to block, or at least delay, whatever legislation it wants to oppose. Without reform, the filibuster threatens to bring the Senate to a halt.

It is easy to forget that the widespread use of the filibuster is a recent development. From the 1920s to the 1950s, the average was about one vote to end debate, also known as a cloture motion, a year; even in the 1960s, at the height of the civil rights debates, there were only about three a year.

The number of cloture motions jumped to three a month during the partisan battles of the 1990s. But it is the last decade that has seen the filibuster become a regular part of Senate life: there was about one cloture motion a week between 2000 and 2008, and 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're more mundane, too. Consider 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. A bill that should have zipped 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.

Part of 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. And 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.

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 might be.

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 the 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. If the majority leader can't round up the necessary 60 votes, the debate continues.

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, a 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 party 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?

For starters, 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 four weeks of debate, the Senate 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 40 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 has to stop everything and debate 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, a 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 these 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 can plainly see that a few Senate rules no longer work.

I believe we should all be cautious and fair about respecting Senate tradition. But blindly adhering to tradition when the American people need us to take a fresh look helps no one. The rules have been changed before, when they needed to be.

Anyone watching this place over the last 2 years will tell you that a few of the rules no longer serve us. They need to be reformed.

We have seen consensus bills, supported by 80 or 90 Senators, get held up for many months because of a single Senator's secret objections.

And we have moved well beyond the intended use of the filibuster for exceptional circumstances and to provide for extended debate. In fact, the filibuster has been so corrosive to this body that we rarely ever even have debate during filibusters. The average American turns on their TV and only sees endless live quorum calls.

The American people are counting on us to get past the tired partisan bick-

ering. 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, is in their interests. Whether we have to waste valuable Senate calendar days watching time run in silence, on bills everyone knows are going to pass, because the rules require it, is in the American people's interests.

In my short time in the Senate, I have offered a number of reforms which would improve the ability of this body to function and help fix our broken politics.

I introduced a rules reform proposal and have testified before our Rules Committee to explain it to colleagues on the Committee. My proposal would eliminate the filibuster on motions to proceed, that are used to 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. As it is now, 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 will be the subject of my address today. I wanted to come down here the first day of this legislative session, this 112th Congress, and talk about the deteriorating situation with regard to oppression and the rule of law in Russia. I have come to this floor a number of times to share my concern on this subject. I wish to begin this Congress by once again expressing my deep concern for what we see happening just in the recent days in Russia.

I remember looking back in 1990 and 1991 at the hope we had, the optimism we in the West had as we watched the Iron Curtain fall, as we watched the wall tumble in Berlin, and we watched

with hope that this would be a new day for people behind the Iron Curtain and a new opportunity for freedom and openness in that society. Unfortunately, year after year, month after month, we have seen since the fall of the Soviet Union a very regrettable and disturbing deterioration in the rule of law in Russia and a move back to the authoritarian rule of old we all remember so well. Recent events in Russia once again cause us to believe this problem is escalating and have caused me to come to the floor today on this subject.

Last month, the leadership of this Senate pushed through, I think in haste, the New START treaty with Russia. I had concerns over the treaty, and I ultimately voted against it. We had a lot more debate that needed to take place. We had dozens of amendments that went undebated and unconsidered and not voted upon by this body, and I regret that. I always thought nuclear arms policy and treaties with regard to our nuclear stockpile should be based on the security of the American people and that the primary issue 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 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