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

The minority leader.

RULE CHANGES

Mr. REID. Mr. President, today the American people have spoken, and they have spoken very firmly. It should be a day of celebration in the United States Capitol. A few hours ago, we saw responsible Republican leaders in the House of Representatives come together to do the right thing by abandoning the attempt to change the ethics rules. We will await the final outcome but I am told it has all been done, that they will have to go to the House floor and approve changing the rules back from where they are now to where they need to be—that is, the way they used to be. The American people are very perceptive. They can tell when something is going on that simply is not fair. What we had in the House of Representatives is one of the leaders, with the abuse of power that takes place so often around here, took himself out of the criticism that he was receiving from the Ethics Committee. He was reprimanded on three separate occasions within 1 year but he did not have to worry about any more censures or reprimands because they simply changed the rules.

That is where the American people came in. They know that the rules cannot be changed in the middle of the game. Today, the Republicans in the House heard that message.

As this Chamber wrestles with its own possible rule change in the next few weeks, I urge my Republican colleagues to pay attention to how the American people feel about what is being attempted. It does not matter how many times one comes to the Senate floor and says there has not been a filibuster on a judge ever before, it is simply not true, underlined and underscored.

I note the tone has been different, and I am happy about that. My distinguished friend, the Senator from Utah, came to the floor today and said there has not been a filibuster of a judge that has come to the floor. Well, that still is not true but it is better than what he said before. What he was saying, in the language we understand in Congress, is the Republicans in the Judiciary Committee turned down 69 judges that President Clinton wanted. They did not come to the floor. They did not come to the committee. Senator HATCH is right, they certainly did not get a floor vote.

Also, we keep hearing we have to have up-or-down votes on judicial nominations. I was somewhat amazed yesterday by what people from the other side of the aisle said, that we are going to allow filibusters on other nominations that come from the President. Now, let us see what logic there is here. On a lifetime appointment, that is a judge who becomes a district court judge or a circuit court judge, they can be appointed at age 35 and serve for the next 40 years, and we cannot use our advise and consent that we have as Senators? But if someone is going to serve for a few months or a few years, as other nominations, then we can talk as long as we want, our ability to speak is not taken away there?

If we look at this, there might be something more there than meets the eye. The American people are not interested in seeing us fight about the rules or pursuing partisan goals. That is why this body has to come together and worked out this issue. We need to take on issues the American people wrestle with every day. Whether it is in Chicago; Oklahoma City; Reno; Pittsburgh; Dover, DE, wherever it is, the people in those communities are interested in health care—as a subset, prescription drugs—and they certainly are interested in gas prices. As I have said on the floor the last few days, Nevada is paying $2.65 a gallon. If you have a small car it is $30.

Veterans—we need to take care of veterans, better than what I see in this budget. The American people want us to talk about this.

They want us to talk about education.

They also want us to see that the checks and balances created by our Founding Fathers are not trampled on, this provision of the Constitution. I hope we are not heading down that road with the nuclear option, which turns the Senate into a rubber stamp, which destroys the checks and balances. As I said in the past, I will do everything within my power to avoid that option and today gives me hope we can avoid that.

The American people did not like what they saw with the abuse of power in the House of Representatives. What did they do? They spoke out loudly. As a result, the Speaker and others in the House of Representatives said we are no longer going to protect one of our own, because it is an abuse of power, and we are going to go back to the rules the way they used to be. That is a victory for the American people. I hope we can accomplish the same here today.

As I said yesterday, it would be a great visual if Senator FRIST and I could walk down this aisle—he stands here, I stand here—and say we have got a deal for the American people.

There is so much work to do, we should not be fighting over these rules. If the Republicans insist on putting politics ahead of the American people, we are going to make sure the Senate works for the American people.

Mr. DURBIN. Will the Senator from Nevada yield for a question?

Mr. REID. I am happy to yield to my friend.

Mr. DURBIN. I would say I followed his remarks closely. If I understand what has just happened in the House of Representatives, or is about to happen, it is that they decided the changes in the ethics rules which were promulgated to protect perhaps one Member or two Members from close scrutiny, in terms of their conduct, are now going to be changed. I think, if I am not mistaken, this will be the second time in the last few months—in recent times, that the Republican leadership in the House of Representatives has changed the ethics rules and then, after public response, came back and restored the ethics rules.

Is this not similar to a situation we are facing on the Senate side, where there are at least some who are talking about the nuclear option, a term that Senator LOTT came up with, that would change the rules of the Senate in the middle of our session, rules that have been in place for almost 200 years?

Mr. REID. I would answer to my friend, not only is there a suggestion about changing the rules, but they are going to do it by breaking the rules. To change a rule here in the Senate takes a simple majority. But if somebody wants to speak in an extensive manner relating to that rule change, you have to break a filibuster. They are not willing to do that. They are going to use brute force and break the rules to change the rules. That is what they are talking about.

So even though what went on in the House of Representatives is bad, what is contemplated here is even worse than that.

Mr. DURBIN. I ask the Senator from Nevada if he will yield for an additional question through the Chair. I would like to ask the Senator, is it not true that the Democrats, in the minority in the House of Representatives, stood together and argued that the integrity of the House of Representatives was at stake because of these changes in ethics rules to favor one Republican leader, or perhaps two, and that by standing together and appealing to the Nation, that they were successful, and now the Republican leadership in the House of Representatives has announced they are going to restore the original ethics rules?

Mr. REID. I say in answer to my friend, I applaud, I commend the Speaker of the House of Representatives from the State of Illinois for realizing that what had gone on was wrong, and it is being changed as we speak. So the Speaker got the message loudly and clearly from the American people.

Mr. DURBIN. I would also ask the Senator from Nevada through the Chair, is it not also true that as we have started talking to the American people about the so-called nuclear option, the term that Senator TRENT LOTT came up with, as we have talked to the people about the nuclear option across the country, is it not true there has been an incredible reaction? I would say to the Senator from Nevada, many of us believed this was an arcane debate that most people wouldn't follow. But we are finding that overwhelmingly the people across America share the view of the Democrats on

this issue, that we should not change the rules in the middle of the game and eliminate the filibuster on judicial nominees, that we should not assault the basic principle of checks and balances also under the Constitution, and, finally, we should stand our ground to make sure that, on a bipartisan basis, we pick judges for lifetime appointments, judges who are in touch with the values and needs of simple Americans and their families?

Mr. REID. I say to my friend, the answer is yes. Yesterday, I got a copy of an editorial from a newspaper in Nevada, a newspaper out of Fallon, NV. In 1998, I got 21 percent of the vote in that county. I have said before, a homeless person could have gotten that many votes in Churchill County, but that is how many votes I got. So I got the editorial and it said, ''Stop Mr. Smith.''

As we know, there are some ads running that show the great movie with Jimmy Stewart as Mr. Smith coming to Washington to give a long speech as a Senator.

I said: I will read it. I read that editorial. It was so magnificent. I ask unanimous consent I be allowed to have that printed in the RECORD.

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

SHUT UP, MR. SMITH

(By Glen McAdoo)

NEVADA, April 25.—Remember when you were a kid and there was always at least one whiner on the block who had to win at all costs? If you were playing baseball and the whiners got three strikes they wanted to change the rules in the middle of the game so they could have at least four strikes. Furthermore they wanted to call the balls and strikes themselves. If, by miracle, they finally did strike out, becoming the third out, they wanted to change the rules so that their team got four outs. Remember those whiners? They would pout and cry or jump up and down and scream bloody murder until they got their way. Remember them?

Well, they are still around. They comprise the majority of the House and Senate leadership in Washington, D.C. They're not called whiners anymore, today we call them Republicans.

Remember the movie, ''Mr. Smith Goes to Washington'' starring James Stewart? Well, you won't find a Mr. Smith among these modern day whiners. And if they have their way, Mr. Smith will never again grace the hallowed halls in our Nation's Capitol. The Republicans want to do away with one of the great traditions in our Government—the filibuster. In an attempt to prevent the Democrats from stopping the appointment of Judges who echo the shallow thoughts of the most extreme far right, the Republicans are up to no good—again.

''Stay home Mr. Smith, there is no place for big mouths like you in the Capitol. Save your breath. Go home to the folks who sent you here. We are in charge now and we would rather you keep your big mouth shut. So what if you are right. Shut your lip. We know what is best for everyone and we don't need a do-gooder like you gumming up the works. What's that you say Mr. Smith? You say we are even angry with the Federal Judges we appointed. That's about half of them. Judges should decide cases based on the law and not public opinion, you say? Darn you, a little truth could spoil everything. See, that's why we want you to shut up and go home,'' so would say the Republicans to Mr. Smith.

Last week, Senator Harry Reid brought forth a million names of people who don't want the rules changed. These people believe the filibuster should stay as part of a time honored practice.

The filibuster may be the only way to stop overzealous lawmakers who insist on approving the worst of President Bush's misguided nominees to the Federal Bench. We must keep the filibuster, and use it when necessary, and if the petulant pouting pompous Republicans in the Senate don't like it they can take their ball and go home. So there!

How quickly they forget. The Republicans have used the filibuster many times. Have they forgotten Abe Fortas in 1968 or Clinton's nominee to the ninth circuit Richard Paez in 2000. All told the Republicans used the filibuster six times in attempts to block Clinton's Judicial nominees. What hypocrites.

In the House of Representatives things are just as bad. Republicans have now changed the rules to make it nearly impossible to have a public inquiry and possibly oust Tom DeLay (R-Texas) on ethics charges. According to Congressman Barney Frank, the Republican leadership has now removed from the ethics committee any Republican with the slightest bit of independence and replaced them with people who will acquiesce to the leadership's wishes. In the past, if the committee were deadlocked five to five a public investigation would go forward. With the rules change it is dead in the water, unless one of these mighty midgets of morality says yea and makes it six to five. These foul balls want four strikes and four outs.

The self proclaimed model for the moral right, Mr. DeLay, could turn out to be one of the slimiest characters we have ever seen in such a high office. We will probably never know for sure unless one of the spineless Republicans on the ethics panel gets some backbone and makes their private probe, public. That may happen, they are under a lot of pressure, but I wouldn't bet on it.

We don't need a bunch of rule changes in the House and Senate. What we need to do is replace a bunch of Republicans with Democrats.

Mr. REID. Mr. President, the first paragraph—and I am paraphrasing but not by very much—starts out by saying: You remember when you were growing up and you had this kid who was never happy? You couldn't win a game because he kept changing the rules in the middle of the game, and if you didn't allow the change, all he did was whine about it?

They went on for long, maybe six or seven paragraphs, saying: What is going on in Washington? Trying to change the rules in the middle of the game is un-American.

This is from Fallon, NV.

So the answer is yes, the American people are speaking. If you can get a newspaper in Fallon, NV, to write a harsh criticism of the Republican leadership we have in the Senate, they should listen because, believe me, I got 21 percent of the vote in that county.

Mr. DURBIN. If the Senator would further yield for a question through the Chair, is it not true that the filibuster, because it requires 60 votes to overcome, really requires the Senate to work to compromise, to find bipartisan solutions to their differences, and brings us together in a bipartisan fashion? Is this not the same thing that the Democratic leader just alluded to, that we should use that same bipartisan approach not only when it comes to lifetime appointments for judges and controversial issues but to find constructive solutions to issues such as the challenge of health care, the cost of health insurance, the need to help families pay for college education—all of the things we should put on our agenda but, sadly, have not been part of the discussion in this Republican majority Senate so far this year?

Mr. REID. Let me say to my friend, a perfect example of that is what is going on on the floor as we speak. One of our colleagues, the distinguished junior Senator from Indiana, Mr. BAYH, has an issue. He offered an amendment to this bill.

The reason he offered it to this bill is he wanted to make a statement about something that is going on in China. He believes trade policies there are unfair and unbalanced. He offered an amendment on this bill.

You can debate whether it should be on this bill, but it is on this bill. He offered an amendment. We have a right to do that. He, as a result of what he has done, held up the nomination of ROB PORTMAN, Congressman PORTMAN to be Trade Representative. I like Congressman PORTMAN, a good man. I think he will do a good job as our Trade Representative.

As we speak, because of this filibuster that he, in effect, is conducting—not necessarily on this bill, but he is not going to let PORTMAN go forward, so we will have to vote 2 days from now—the parties have come together. They are talking. I am confident we will work that out and PORTMAN will be approved tomorrow.

The answer is yes. One of the good things about this institution we have found in the 214 years it has been in existence is that the filibuster, which has been in existence since the beginning, from the days of George Washington—we have changed the rules as relates to it a little bit but never by breaking the rules.

I say to my distinguished friend, the senior Senator from Illinois, in all the political writings about filibuster, that is one of the things they talk about as a positive. It forces people to get together because sometimes in this body you become very fixed. You think you are the only person who knows what is going on and you need to examine yourself. The other person has an issue. The Senator from Illinois is absolutely right. It brings people together.

Mr. DURBIN. If I could ask one final question of the Senator from Nevada through the Chair? I know what the Senator said about his commitment to the traditions of the Senate, to the constitutional principles that guide the Senate, such as the protection of the minority so there will never be another tyranny of the majority; that you will

have this filibuster that gives the minority, always, a voice in the dealings of the Senate.

I know the Senator from Nevada—and I share his belief—is committed to this constitutional principle that goes back to our Founding Fathers. But I want to ask the Senator from Nevada in closing: Is it not true, as you announced yesterday, that despite this commitment to this core principle that you have reached out to the other side, to the Republican leadership, in an effort to try to find some common ground to work through our difficulties and differences over several different judges; that you have spoken directly to Senator FRIST and many Republican Senators in an effort to try to resolve this, and that, sadly, Senator FRIST came to the floor yesterday and announced he wouldn't be party to any negotiations to try to work this out?

Mr. REID. I say to my friend, first of all, in defense of Senator FRIST, the statement he gave was before we had our meeting. I have confidence Senator FRIST is weighing the offer I gave him.

Let me say this to all my friends, including the distinguished junior Senator from Pennsylvania: I am not going to dwell on what took place during the Clinton administration. Most people would acknowledge it was not right. I am not going to dwell on what took place these last 4 years of the Bush administration because I am sure people can make a case, as advocates can, that maybe we did not do the right thing in those years.

I am asking my Republican friends on the other side of the aisle to give us a chance. Let's work our way through this. We are not out plotting to take the next Supreme Court nominee who comes before the Senate, waiting in the wings to knock him or her out. We are not waiting to knock out circuit judges or district court judges.

Test us. We have proven so far this year that we are willing to work with the majority. We have done some pretty good stuff in spite of a number of things we could have held up for a long time. As I said yesterday, we could have held up class action for a long time. Just to go to conference takes three separate cloture votes. Bankruptcy could have taken a lot of time.

We legislated the way the Senate used to legislate. We had a bill come to the Senate. A person offered an amendment. He spoke in favor of it. People came and joined in that. People spoke against it. And we did things the old-fashioned way—we voted on them and then sent the bill to the House. That is the way we did it.

We have to develop faith in what we are trying to do. I am saying to everyone, trust us. Yes, I have spoken to Republican Senators. I have spoken to every one of the Democrat Senators. I have spoken to quite a few Republican Senators. I hope they give us the benefit of the doubt.

We are not working from a position of weakness. The American people want us to do this. They want us to join together, to pass legislation. They do not want anyone breaking the rules to change the rules.

This is so important for our country. We need to come together to work out our differences. It is not only important to this institution, it is important to our country.

I thank very much my friend from Illinois for his questions.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I ask unanimous consent I be able to speak for 7 minutes.

Mr. REID. Mr. President, I have no problem with my friend speaking. My friend has to catch a train, and he has had unanimous consent to speak here for a long period of time. I think he should be able to go first. I object. I want my friend from Delaware to go first.

Mr. CARPER. I appreciate that. I will miss my train, but go ahead. I yield to the Senator.

Mr. SANTORUM. If the Senator is going to miss his train because of my 7 minutes, not because of his own speech, I will withhold. But if he is going to miss the train because of his speech—

Mr. REID. Mr. President, I object.

The PRESIDING OFFICER. The objection has been heard.

The Senator from Delaware is recognized.

Mr. CARPER. I thank the Senator from Pennsylvania, and I promise to be very brief.

The PRESIDING OFFICER. The Senator is recognized.

NOMINATION OF STEPHEN JOHNSON

Mr. CARPER. Mr. President, I have been here 4 years. I have never placed a hold, as I recall, on any nomination for anyone to serve in this administration.

When Christie Whitman was nominated to head up EPA, I said: Congratulations. What can I do to help get you confirmed and to confirm the members of the team you want to surround yourself with? And I went to work on it.

When Mike Levitt was nominated to succeed her, I called Mike Levitt—both him and Governor Whitman, with whom I served—I called Mike Levitt and I said: Congratulations. What can I do to help get you confirmed and the team you want to surround yourself with? And I went to work on it.

When Tommy Thompson was nominated to be Secretary of Health and Human Services, I called to congratulate him and said: What can I do to help get you confirmed and confirm the team you want to surround you? And I went to work on it.

When Tom Ridge was nominated to be Secretary of Homeland Security, I called him and I said: Congratulations. What can I do to help get you confirmed and to confirm the team you want around you?

For me to stand here today in an effort to stop, at least for a short while, the nomination of Stephen Johnson to be Administrator of EPA is out of character for me. That is not the way I do business. I hope my colleagues realize that after 4 years I am a guy who likes to work across the aisle, and whether the issues are some of the issues Senator REID just mentioned—class action reform, bankruptcy reform legislation, now asbestos, overhauling the postal system, comprehensive energy bill—I am one on the Democrat side who looks forward to working not only with my colleagues but with our colleagues on the other side of the aisle.

We have problems in our country, challenges we face on all fronts. Among those challenges we face is what to do to improve the quality of our air and how we can do that in a way that does not cost consumers an arm and a leg. What can we do to improve the quality of our air that does not encourage the shifting of utility plants from coal, which we have in abundance, to natural gas, which we don't.

We have had sort of a Hobson's choice in the last couple of years—the administration's clear skies proposals, multipollutant bill dealing with reducing sulphur dioxide, nitrogen oxide, mercury from utility plants, compared to the proposal of our colleague from Vermont, Senator JEFFORDS, and others, who would propose to go further, a lot further, a lot faster than the administration on those three pollutants, and add a fourth, carbon dioxide.

The Presiding Officer, as well as my friend from Pennsylvania—we have all served in the House together. I don't know about them, but when I served in the House, I never liked it when I was dealt a Hobson's choice—a position over here and another position over here. I never liked it.

One of the great things about the Senate is we can craft something in the middle. What I sought to do in working with people such as Senator LAMAR ALEXANDER from Tennessee, LINCOLN CHAFEE from Rhode Island, and JUDD GREGG from New Hampshire, was to come up with something in the middle, a centrist approach that we believe reduces the emission of sulphur dioxide, nitrogen oxide, mercury from utility plants, gets a start in slowing down the growth of emissions from CO_2, and does so in a way that does not cost consumers an arm and a leg and, frankly, does not lead to a lot of shifting off of coal and onto natural gas.

We introduced legislation the first time in 2002. That was the year I first asked EPA for comparative analysis, comparing the administration's clear skies proposal with our bipartisan bill with the Jeffords bill. In 2003 we got a lot of raw data and not much analysis from EPA. Along with the raw data and the limited analysis they sent us, they said some of the assumptions on which this analysis was conducted are, frankly, out of date and that the information we have shared with you is maybe not as valid as it otherwise would be.