about rule changes together. But that is not what he is suggesting he is going to do. He says he is going to break the rules to change the rules and employ the nuclear option.

That is not a negotiation with the minority over rules changes. What we ought to be doing is talking to each other about what adjustments in the rules we could advocate together, and not one party with a majority today—that might be in the minority 2 years from now—breaking the rules to change the rules for some kind of misguided short-term advantage. That is the problem.

So I would be happy to talk to the majority leader about these issues, but I vigorously oppose—and I know Senator Byrd would vigorously oppose—breaking the rules to change the rules. He was very clear about that in 2010. I know he would object to it.

I hope somehow this nuclear option can be avoided. It seems to me to be an absolutely unnecessary distraction away from much larger issues confronting the future of our Nation.

Mr. REID. Mr. President, Senator Byrd served in the House of Representatives and the Senate for almost 60 years. He gave lots of speeches. I have quoted what he said. I will quote again part of what he said.

> The Constitution in Article I, Section 5 says that, Each House may determine the Rules of its Proceedings.
>
> Now we are at the beginning of the Congress. This Congress is not obliged to be bound by the dead hand of the past.

So this debate is not going to be solved by the deceased. It is going to be solved by us. We are in the Senate today and the Senate has not been working. No matter how many times the Republican leader says he likes how things are today, it doesn't make it so that the majority of the Senate likes how it is today. The facts are the facts. We can't make them up. The Senate is not working, and we need to do something to fix it.

I close, then, as I began. I would be happy to work with Leader MCCONNELL about rules changes. I have made clear what we seek. I await his suggestions. As I repeat again what I said earlier, a man who has served with distinction in the Senate, JEFF BINGAMAN—quite a legal scholar, having been attorney general before he came here—asked: Why are we asking for such modest changes? So if the Republican leader has some ideas as to what he thinks should be done, I will come to his office. We can do it privately or publicly. I am happy to work with him. As I indicated, that is how I used to do things when I tried cases. This is the same, just that we have a bigger jury.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. Under the previous order, the following hour is equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half.

The Senator from Arizona is recognized.

RULES CHANGES

Mr. KYL. Mr. President, I would like to continue the conversation that our two leaders were engaged in earlier and also on yesterday. This is going to be a very important issue for the Senate.

To put it into perspective for the American people, let me just say that a rules change in the Senate is not a small or an inconsequential matter. It is even more important if it is attempted to be done without going through the normal process of changing the rules, which requires a two-thirds majority. This is important because the Senate has always considered itself a continuing body. It does not end and then begin again as the House of Representatives does because the House has an election every 2 years. In this body, Members are elected for 6-year terms. As a result, every 2 years we have some turnover in the body, but two-thirds of the body has already been here and continues forward.

So the rules of the Senate have always been continuing rules of the continuing body, amendable by a two-thirds majority of the body. To suggest a nuclear option by which a mere majority of the body can amend the rules is itself a violation of the rules. It is an assertion of power. But as the old saying goes: Might does not make right. And the fact that the majority may have the power to overrule a ruling of the Chair, thus establishing a new precedent and a new rule of the Senate, does not make it right. That is why it hasn't been done.

In point of fact, there was a time a few years ago, as has been discussed, when some members of the Senate Republican majority were considering the use of the same parliamentary tactic to ensure a vote on nominees for the U.S. Supreme Court and also for the Court of Appeals. The feeling was that the Democratic minority had filibustered over and over and over and had prevented votes, I think, on Miguel Estrada, who was being nominated for the DC Circuit Court of Appeals. I think he was filibustered seven separate times.

The Republican leadership was investigating the possibility of ensuring that we could get a vote. The only way that seemed possible was to assert this power of overruling the Parliamentarian's ruling through the Chair and thus establishing by 51 votes—or a mere majority—a new rule of the Senate.

That was deemed to be such a change that it was called the nuclear option because it hadn't been done, and we could say that it was comparable to the use of a nuclear weapon in a war. It was such a game-changing proposition, to say the least, that Members on both sides of the aisle got together in what they called the Gang of 14. I think almost everyone in this body is glad that cooler heads prevailed; that those 14 Members decided they would reach an agreement amongst themselves that would make it impossible for either the Democratic Party to automatically filibuster nominees or for the Republican Party to have this right to change the rules just because they had 51 votes. Therefore, they reached the compromise which, for judicial nominees, was that there would be no filibuster except in extraordinary circumstances.

Both sides deemed that a sufficient way of resolving the issue that came before us at that time. Everybody stood down. The war did not occur. The nuclear weapon was not used, and that was for the best of the country and certainly for the best of the Senate. We avoided a crisis and, certainly, there would have been a crisis. I can't imagine that my friends on the Democratic side of the aisle would not have reacted very badly to the use of that nuclear option had it been done by the Republican majority.

Well, today the shoe is on the other foot. The Democratic majority now has reason to believe that it would like to move forward with more alacrity on legislation. Therefore, it believes that by this same nuclear option procedure it should change the rules so that the ability to filibuster at the beginning of the consideration of the bill is eliminated.

The Republican minority naturally has said: Wait a minute. That is wrong for two reasons. First of all, just as you accused us of doing, you are changing the rules without going through the rules process change. This is your own version of the nuclear option. If it was wrong then, it is still wrong now. And most of us agreed after the fact that it was wrong then. But, secondly, what you would do, if you eliminate the requirement for cloture and a cloture vote if there is an objection to a unanimous consent request to take up the bill or motion to proceed to a bill, what you are doing is putting all of the power into the hands of the majority leader—in this case, the Democratic leader—to decide whether there will be any amendments at all from the Republican side or even from the Democratic side. The only leverage that the minority has to ensure that it will be able to offer amendments is to negotiate with the majority leader and ensure that right exists. And the only leverage it has is to deny cloture on the