

which puts great pressure on the body to try to get things done in the time that remains. That is my view of why we are where we are and why it is important to change the rules.

I will yield after saying I do think the Senator from Oregon and the Senator from New Mexico have done this body a great service by their leadership on pressing forward on rules changes. I think it is very clear that however this ends up turning out, the majority leader has 51 votes for a change to put the Senate back on a footing where it is behaving as a Senate again and we are not spending our time in the dead zone of endless quorum calls.

I yield the floor.

Mr. MERKLEY. I thank my colleague from Rhode Island for his very lucid commentary.

We do have a responsibility to enable this body to debate and decide issues in order to address the big issues facing America. It certainly is not the case that we have been fulfilling that responsibility. This is why the popularity of the Senate and the House has dropped to incredibly low levels, because people see there are big challenges in America—big challenges about investment and infrastructure, big challenges about the management of our military policy and our military provisioning, big challenges in regard to the environment, in regard to health, and certainly big challenges in regard to education. So no matter how long the list gets, we just get more and more and more paralyzed and unable to address anything in this body.

Tomorrow is the first day of the next legislative session and my colleague from New Mexico has arrived and I ask unanimous consent that we be allowed to engage in a colloquy.

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

EXTENSION OF MORNING BUSINESS

Mr. MERKLEY. Mr. President, I ask unanimous consent that morning business be extended until 4 p.m., with all other provisions remaining in effect.

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

Mr. MERKLEY. So my colleague from New Mexico has made this powerful case about our responsibility and about the opportunity provided under the Constitution, and I have been immersed in trying to wrestle with the components of how we actually seize that opportunity in terms of the substance, the material we put together to make this body work better. But the important thing is that tomorrow this begins.

In that regard, I yield to my colleague from New Mexico, who has been, again, at the forefront of calling for us not to bypass this opportunity to have this body engage in the debate and figure out how we can change the way we work so we can do the people's work as is expected.

Mr. UDALL of New Mexico. I thank my colleague very much, and let me say to my colleague from Oregon, who has been a real leader on this, he has been diligent, he has studied this, he cares about it, and he has been a great partner. The packages that were voted on the last time we helped put those together—and there were two very significant votes, as Senator MERKLEY realizes. We came very close. We had 44 votes for a package that would make 4 or 5 changes and then his package on the talking filibuster, which was included in both packages, received 46 votes. That showed that if we had the opportunity at the beginning of a Congress to change the rules under the Constitution, we were very close to the 51 votes.

I just want to comment on what my colleague from Rhode Island said earlier—Senator WHITEHOUSE—and repeat that because we have been counting the votes over the last couple months. We have been trying to determine if the votes are there in order to be able to change the rules, and we know at the beginning of a Congress that we need 51 votes.

I also want to respond to several things that were going on here earlier on the floor. Several Senators made statements, and several of those statements were from the other side. I believe they should be responded to because we are in this crucial phase in terms of adopting the rules.

The first issue that comes up is this issue of breaking the rules to change the rules. This has been what has been repeated numerous times in the last couple months with our Republican friends and colleagues coming to the floor. They use the phrase “break the rules to change the rules.”

In fact, when we use the Constitution, there is no conflict with the Senate rules because three Vice Presidents have ruled from the chair, where Senator CARDIN is now sitting, that at the beginning of a Congress, on that first legislative day, we can change the rules, and we do it pursuant to the Constitution.

The Constitution, at article I, section 5, says the Senate can determine the rules of its proceedings. Every constitutional scholar I know of who has looked at this realizes that is the window—that first legislative day—in order to deal with the rules. So when, in fact, we legislate on that day in a rules context, we are not breaking the rules; we are creating the rules for the coming Congress—in this case, the 113th Congress. We are creating the rules that will govern.

Do I think we should use the Constitution to change the rules every couple weeks after we put rules in place? Of course not. That is not fair to do. We would never be advocating for adopting rules and then changing them every couple weeks or every couple months. In that situation, there is a high threshold to change the rules, as it says in the Senate rules.

But I want to engage in this colloquy with my colleague from Oregon, first of all, on this issue of the constitutional option and in terms of utilizing the constitutional option at the beginning of a Congress; putting the rules in place and then following the rules throughout the Congress. I ask my colleague: Isn't that the way we are intending to move?

Then, secondly, the heart of the matter—and this is where Mr. MERKLEY, the distinguished Senator from Oregon, has been instrumental in terms of helping us deal with the dysfunctional filibuster system we have right now—we have a secret filibuster. We have a silent filibuster—in fact, we have way too many filibusters. Just to give a little comparison, when LBJ—Lyndon Baines Johnson—was majority leader for 6 years in the 1950s, he had one cloture motion filed—one filibuster. HARRY REID, whose office is just a few feet from here, as the President pro tempore knows, comes to the floor and he has had close to 400 filibusters in his 6 short years. So they have gotten completely out of hand.

One of the things I want to talk to my good colleague, the Senator from Oregon, about, in addition to this constitutional option—the small window we have tomorrow on the first legislative day—is also how do we remedy this situation in the Senate? Everyone acknowledges the Senate has become dysfunctional; that we are not doing the work of the American people. We hear our Republican colleagues say they do not like the way it is working. So I ask: What is the best way to get to the heart of that? Is it the talking filibuster? Is it trying to change the rules on the motion to proceed? How do we get at the heart of what the problem is?

I yield for my colleague.

The PRESIDING OFFICER. Without objection, the colloquy is extended.

Mr. MERKLEY. I thank my colleague from New Mexico. I am going to be very brief, because in 2 minutes I am taking the chair so my colleague from Maryland can continue with his schedule.

Indeed, the silent secret filibuster that is occurring in the Senate today is deadly. What it means is that after there has been a vote of 41 who say we want more debate, there is no more debate because no one is required to debate. Instead, they don't want to appear in front of the American people and make their case, and that is outrageous. If you are voting for more debate and you are going to take up the time of this institution, time it could be using to address many of the challenges that face America, then you should have the courage of your convictions to make your case on this floor before your colleagues, before your constituents, before the American public, and engage in that dialogue. If you don't feel you want to spend the time and energy to do that, then you

should stand aside and we should proceed with a simple majority vote and address the issue at hand.

I do think we need to address that silent filibuster, that secret filibuster. The American people deserve to know why it is we are not getting their work done. And if they can see that it is being blocked by a group that is publicly making their case, they can either agree with them and say, That person is a hero, they are standing up to some core principle and we salute their efforts, or they can say they are a bum, because all they are trying to do is paralyze the Senate, they are not making any valuable points. And that feedback I think will help us resolve some of those filibusters.

In some cases folks have said, Well, isn't that going to eat up more of the Senate's time? And I respond, No, it is not. Because we are talking about what is now silent and hidden but paralyzing us being done in public, where there is actually a dialogue about the issue at hand and the public can participate. It is not the only thing that should be done, but it certainly is a key part of the formulation.

With that, in an hour or so I would be happy to rejoin the conversation.

I yield the floor for my colleague from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. UDALL of New Mexico. Mr. President, I thank the Senator from Oregon, because he has elucidated here the real issue that we face as a Senate.

The Senator from Maryland, who is presiding, knows well. He has worked on the rules, and I hope he will join me here for a minute to talk about the rules situation we are in and where we are headed.

There are several issues that are before us: How do we move into a more deliberative body? How do we move to the point where we get on to legislation, that we have amendments, we let everyone be heard, we let the minority be heard, and also at the end of the day be able to get to a majority vote? That is the way the Senate used to proceed, and now we have one Senator holding up the whole show.

Frequently you will have a Senator who will block hundreds of bills with these secret, silent filibusters. We shouldn't be allowed to have that kind of situation with any Senator, and we need to give up that little bit of power to make the institution itself a better institution. This institution is a great institution. It has a lot of very capable people in it. But it is not responding to what the American people want us to do. That is why we address the rules at the beginning of every Congress and why we should address the rules at the beginning of every Congress.

I ask unanimous consent to allow my friend, the Senator from Maryland, and I to engage in a colloquy.

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

Mr. UDALL of Colorado. I yield for the Senator from Maryland.

Mr. CARDIN. Mr. President, I thank Senator UDALL for taking the time and for his commitment to this institution so that it operates correctly. I thank Senator MERKLEY for his leadership.

I agree with both Senators. If you are going to engage in extraordinary action such as a filibuster, you should be on the floor talking about it. That makes sense, that when the Senate is in session, we should be conducting business. We shouldn't have to go through extensive quorum calls because a single Senator is objecting to us proceeding. We want to get back to the traditions of the Senate where this becomes the greatest deliberative body in the world, where we debate issues and we resolve issues and we act on issues.

I was listening to the distinguished Senator from Alabama, and he was pointing out how he believes that the Senate is not working the way it should and that we should be debating more amendments. I think we should be debating more amendments. I think the key we need is that we need to change the way the Senate has acted and operated in recent times, and that means we need to get more legislation more quickly and actually debate bills. We have to have committees able to report out legislation that could be acted on on the floor of the Senate. We have got to bring issues to conclusion.

There are two problems here, as I see it: One, we have had individual Senators who have used their right to object to a unanimous consent, delaying almost indefinitely—in some cases killing—legislation from being able to move forward by a single objection, and a lot of times they are not even on the floor of the Senate to make that objection. They just through their leader say, We don't want this bill to move forward; and maybe, yes, we will let it move forward if you will let us have 50 amendments. That is the same as killing the bill.

So we have seen individual Senators exercising their right to object who have brought legislation to a standstill on the floor of the Senate. That is wrong. And as my distinguished colleague, the Senator from New Mexico, pointed out, the majority leader has had to file record numbers of clotures to end debate because the minority party, for whatever reason, has not allowed us to proceed with legislation for debate.

Normally the majority party has the right to determine the agenda of the Senate. They don't have the right to pass bills; that is up to a majority of the Senate. But the majority leader should have the right to bring a bill to the floor of the Senate. That has been denied over and over by the minority party. That is wrong.

I agree with my friend from Alabama that there should be the right to offer amendments. I think we should debate issues. I agree with that. But that

hasn't been the problem. The problem has been that a certain number of Members have used their right to object, working through the Republican leader, blocking us from considering a lot of bills on the floor of the Senate.

So what do we need to do? We need to be able to first move legislation forward. We need to be able to bring bills out of our committees and have them on the floor for debate, get on the amendment process.

We just took up the National Defense Authorization Act. We used that process. It worked. That bill passed the Senate by an overwhelming number. We considered many amendments. By the way, every amendment was considered by a majority vote. That is how this should work. Majority rules should rule on the floor of the Senate. I agree with all of that.

The first order is to be able to bring bills to the floor in a more efficient way. The second problem we have, quite frankly, is that the Republicans have blocked the ability to orderly consider the nominations of the President, whether they are his Cabinet or subcabinet positions or whether they are the article III judges. In many cases, once we get to the nomination it passes by an overwhelming majority. I can't tell you how many nominations have been approved basically by voice vote in the Judiciary Committee that have had to wait months for consideration on the floor of the Senate. In my State of Maryland we had several nominees, not controversial at all, who had to wait month after month for confirmation before they could sit as a district court judge.

First of all, it is unconscionable to make people wait when we need to have judicial positions filled. Secondly, it is affecting us getting the very best people to step forward to serve, because do they really want to go through that type of uncertainty, not even clear whether the Senate will act on their nomination before it adjourns? So the second issue is we have to act on nominations in a more efficient way.

The third—and I agree with my colleagues here. Ultimately, the majority of this body should be able to move legislation. And at a minimum, I agree, if you are using an extraordinary measure as a minority to block legislation, you should be on the floor of the Senate speaking on that issue. Your responsibility should be to talk. If you are using a filibuster, you should be there engaged in that filibuster.

I think these are reasonable reforms that we should try to move forward. This body operates on a lot of unanimous consents; we move a lot of legislation. We have what is known as the hot line, where at the end of the day we try to clear bills and then the leader brings them to the floor for consent or voice vote. At times there are Members who put a hold on a bill, and we have had Members who put holds on hundreds of bills. They should come to the floor to object. In many cases these are

not broad bills. These are bills that affect perhaps land in New Mexico or establishing a national park in Maryland that have gone through the whole committee process and we have worked out all the cost issues so there is no cost involved. They have passed the committee by overwhelming majority votes—in most cases unanimous votes. But now you need to move them forward so we put them on the hot line, and we don't even in some cases know who is objecting. The Senator who objects should come to the floor of the Senate and object and give a reason. I know we got rid of the so-called secret holds, but they still exist today. We should operate with Members being here on the floor conducting business, not in their office either in the Capitol or in their home States. They should be here on the floor of the Senate if they intend to exercise their right to object, and then give us an opportunity to work that out so we could move legislation more efficiently.

The bottom line, what we need to do, is make this system work more efficiently. This is the greatest deliberative body in the world. We should be debating issues. That means bringing bills to the floor in a more timely way, getting on amendments in a faster way, voting and debating issues for the American people.

I applaud the Senators from New Mexico and Oregon. They have taken the leadership on bringing this to the attention of the American people. I think for too long a period of time Americans didn't focus on this issue.

Well, they are focused on it today. They understand that a lot of the bills they wanted to see passed in the 112th Congress didn't get passed and they want to know why we didn't even debate those issues.

Let us reform our rules and procedures on the floor of the Senate to reflect the best traditions of the Senate. That is what the Senator from Oregon, the Senator from New Mexico, and others are trying to do.

The Senator from Alabama talked about restoring the traditions of the Senate. I hope we can do it in a bipartisan manner. That is the way it should be done. We should come together to preserve the institution. It should work whether the Democrats are in the majority or the Republicans are in the majority. The same rules should work. Whether we are in the majority or minority, we should believe that we should come to the floor of the Senate to debate the issues that are important to our constituents.

I thank again my friend from New Mexico for allowing me to engage in this colloquy with him. I applaud him again for standing up on this issue. I know it has been difficult at times when many people come over and say, Why are you trying to change the traditions of the Senate? The truth is we are not trying to change the traditions of the Senate. We are trying to restore the Senate to the type of body it

should be. I don't think there is a single Member of the Senate who believes that we conducted business in the best traditions of the Senate during these past 2 years, and that has been because we have seen the abuses of individual Senators holding up bills and not being able to debate issues. We have to overcome that. I think we have a chance to do that at the beginning of the 113th Congress, which will start in less than 24 hours from now. I am pleased that the three of us will all be in the Senate in the 113th Congress, and I hope we will have a chance to resolve these issues because I think it is critically important for the people we represent in our respective States and in the country.

Mr. UDALL of New Mexico. The Senator from Maryland hit on a couple of incredibly important points here, and I hope he has a minute or two to further engage in a colloquy.

First of all, we shouldn't be saying all the credit goes to me or to the Senator from Oregon. Senator CARDIN, the Senator from Maryland, participated very actively 2 years ago in the key group of Senators who were trying to understand what the rules were all about, why the Senate wasn't functioning, and how do we get to the point of drafting a package and working out a package to make it happen. I congratulate him for that.

I want to also congratulate the Senators who have worked on this from about 2006 on. Those Senators have come in and they have seen the Senate not be the way it should, not maintaining those traditions of debate and discussion, and then finally, at the end of the day, acting on those important problems.

The Senator from Maryland knows that history. I appreciate exactly what he said. It should be bipartisan. As he knows, what frequently happens around here is that when you get close to having 51 votes—which we have today, we have 51 votes, and the majority leader has 51 votes to be able to walk down here and say: These are the rules we want, and to do it. When the reality sets in on the Senate that we have 51 votes, then people start thinking, how do we want to put this together?

A bipartisan tradition is important. We have—the Senators from Oregon, Maryland, myself—we have all invited our Republican friends and colleagues forward, saying: Engage with us to get back to the point where this Senate can operate in a bipartisan way with respect to the rules and with respect to the substantive legislation.

What I want to ask the Senator from Maryland has to do with the President's team. We only have one President at a time. We have Barack Obama in as President. He was reelected. He still has people from this Congress—a large number of judges, of nominees—who are held up for months and months. Does the Senator from Maryland believe that the nomination proc-

ess is broken, that we need to move forward, to find a way so we can get up-or-down votes on some of these nominations, whether they be judicial, whether they be people who are going to serve in these Cabinet agencies?

Mr. CARDIN. I thank the Senator for raising the issue. Let me tell people what happens all too frequently in this body. The President will nominate a person to be at a Cabinet-level or sub-Cabinet-level position that requires confirmation of the Senate. Individual Senators say: I have a problem. Maybe it is the person in the health department. I have some problems in the health department that I would like to see paid attention to. It has nothing at all to do with the nominee. In fact, getting a confirmed person in that position would be very important to getting those issues resolved. The Senator uses what is known as the courtesy of a hold to hold up that position in order to try to get changes made in that agency. That may take a week. That may take a month. That may never be resolved. In the meantime, we are not acting on many of the positions that require confirmation from the Senate.

I think we are down to about 500 positions now that require Senate confirmation. We streamlined that in the last Congress. We eliminated some that required the confirmation of the Senate. That was a good change we made 2 years ago. That worked. We now have somewhere around I think 500 or 600 positions that require Senate confirmation.

Let me give a little arithmetic here. If the majority leader has to bring a cloture motion in order to break an individual hold of a Senator on those 500 nominees, the Senate will do nothing but nominations. We will not be able to do any other business because, as you know, it could take up to 30 hours of postcloture time to consider just one nominee. So under the current rules of the Senate, if one Senator wants to stop the confirmation process, that Senator can basically stop it and bring it to a halt. That has happened. We have seen that happen too frequently.

One of the suggestions that has been made is that when we have these confirmations that have been approved by the committee, allow us to bring them to the floor and certainly eliminate or restrict the postcloture time because it is not used other than for a delay purpose. In that way, we can bring forward nominations more efficiently. If there is a serious problem, let a Senator register the problem. Let a Senator come to the floor and speak about the person. But we have not had discussions on the floor.

It is interesting—when we finally break that hold and the nomination comes forward, we finally get a cloture motion passed, the debate time is virtually zero. There is no debate time needed for these. It is not as though Senators are delaying it because they need debate time. These are strictly dilatory actions.

For the sake of any administration, whether it is a Republican administration or Democratic administration, whether it is the first term or second term, that President should be able to get his or her team in place. Yes, we should take seriously the advice and consent of the Senate. That means we should vote on those nominees. If there is a serious concern, let's vote on it, and if we want to filibuster it, be on the floor debating why.

We think the minority has a responsibility—or in some cases it could be a minority within the majority—to argue why we believe it is important to bring this matter to the attention of the American people. But don't continue the practice that has been used in recent times where nominations are delayed months and sometimes indefinitely because of basically unrelated issues or the will of the minority or a number of Senators—in some cases, just a handful. That should not happen. We should be able to do these more efficiently.

We have a recommendation for this, and it is very simple: Let's eliminate the postcloture time. That way, we would be able to bring the nominations to the floor and act on them in a much more timely way if there is really an issue about getting a vote on a nominee. There are ways we could do that, but it should be part of the reforms of the 113th Congress.

I thank Senator UDALL for bringing up that issue. That is a very important issue for any administration, whether it is a Republican or Democratic administration. It is hard to hold an administration accountable if they do not have the confirmed top leaders of their team.

Mr. UDALL of New Mexico. The Senator from Maryland has really hit it on the head. You do not have to go any further than today's Executive Calendar. We all have them on our desks. You pick up the Executive Calendar and, talking about approving these nominees and judicial nominees, executive nominees, here I see on page 4 that we have people who have come out—this is for the judiciary—have come out of committee March 29, and they have not gotten a vote. Here is another one from April, reported by the committee—April 26, May 17, May 17, June 7, June 21. These are nominations where people have stepped forward. They want to be public servants. The President has nominated them. They have been through the committee process, and they are just waiting.

As the Senator from Maryland said, what ends up happening is that good people are discouraged from taking these jobs. My grandfather used to say that if you do not have good people in government, the scoundrels will take over. We are discouraging good people from getting into government. You need good people in public service, and we are discouraging them by setting up a process where, as the Senator from Ohio told me—he had a judge recently,

and he told the gentleman: This is a long process, it is laborious, it is tedious, and it will probably take you a year if you are willing to go through this. When the judge finally agreed, it took 2 years from the time the President put him forward until he was actually on the bench.

I ask the Senator from Maryland, does he think people are going to put themselves out there, and doesn't this discourage good people from getting into public service? Don't we want the very best and the brightest on our benches and in the executive branch working for the American people?

Mr. CARDIN. I can tell my friend from New Mexico, that is happening today. I have talked to people in Maryland who are very reluctant to put their names forward because they do not want to put their families and themselves through the uncertainty.

Let me tell you what happens. Let's say you are a distinguished attorney in a law firm and we would love to get you as an article III judge, so we convince you. You are the most distinguished person for this job, the person everybody wants, not partisan at all, no controversy. The Bar Association will give you the highest ratings. You have already been vetted through the FBI process. There is nothing in your background that would raise a concern with anyone. But you look at the calendar here and say: If I go through this, I am going to be on this calendar for at least 6 months, it looks like. What does that do to my law firm? Can I try cases? What do I do for the next 6 months? It is not fair to me, it is not fair to my law firm, and it is not fair to my family. So you are not going to put yourself forward.

Let me tell my colleagues about another problem. In many of these circuits where these judges are sitting—these nominees are waiting month after month, and we have judicial emergencies. We have a chronic problem of moving cases in these circuits, where the administrators of the courts—these are independent branches of government—tell us they cannot do their job because they do not have the manpower to do it. And we are holding up confirmations not because of any substantive reason but because of the process or because of one person in the Senate who, for reasons unrelated to that individual, is holding up all of these nominations. That is not right. We are denying our country the very best, who cannot step forward under this type of circumstance, and in many cases we are denying justice in our circuits because we do not have people in place to be able to timely resolve rule-of-law issues, which is the basis of our system here in America.

It is a very serious situation. We need to resolve how we handle the Article III confirmation process in the next Congress, which starts again in less than 24 hours, as well as the individuals whom we want on the boards who need confirmation—the sub-Cabinet and Cabinet positions.

The same thing is true of Cabinet positions. If you are an expert in securities issues and we want to get you on the Securities and Exchange Commission and you have to be out there for 6 months, what is it going to do for your business? Can you do your profession?

It is just not right. I think people are willing to be subjected to the scrutiny of advice and consent. They understand that. What they do not understand is dilatory delay, and that is what has to come to an end.

I thank my colleague for raising those issues.

Mr. UDALL of New Mexico. I thank the Senator from Maryland. He is passionate about this, and he has explained it very well. I ask any Senator to look at this Executive Calendar today. We are doing exactly what my grandfather advised against when he said that if the good people do not go into public service, the scoundrels will take over. You get second-class government. You don't get good people. We are discouraging good people from going into the government with the procedures we put them through, with the length of time of this delay. This is not what we should be doing in the Senate.

I yield.

Mr. CARDIN. I ask my colleague—I daresay most people in this country do not know what a motion to proceed is all about. They do not realize the majority leader cannot bring a bill. A bill might be reported. We might have a farm bill or a Defense authorization bill or we might have a bill coming out that reforms some of our judicial codes. It comes out of the committee with a bipartisan vote. I think our constituents will be surprised to learn that the majority leader cannot bring that bill to the floor. It has to go through what is called a motion to proceed.

What might happen in that motion to proceed? You might just tell us the problems we have today because we couldn't get to a lot of motions to proceed.

Mr. UDALL of New Mexico. The Senator from Maryland has hit it on the head. Look at what we are talking about on a motion to proceed. I think it would surprise the American people to know that if the majority leader comes to the floor, now we have—this is not to make it partisan in any way—55 Democratic votes. The majority leader says: I see we have a serious housing problem. We want to put a housing bill onto the floor of the Senate.

I don't think people realize that the majority leader, if he doesn't have any agreement at all, then has to file a motion to proceed to that bill. If all the delay and roadblocks and obfuscation are put in front of him, it takes him 8 days to get to the bill if he can get 60 votes. If he does not, he probably wastes a whole week trying to get to the bill, and he doesn't get 60 votes, and then we fold it down and say: What is the next issue we should move on to?

As the Senator from Maryland knows, we have to be able to put bills onto the floor and give them the time they deserve. We are wasting all this time up front that we could have a bill on the floor, we could have amendments, we could have debate, we could have all of those things going on that we know are the way the Senate should work.

I yield.

Mr. CARDIN. Under current policy, the motion to proceed has to be approved before anyone can offer any amendments. My friend from Alabama is talking about amendments. We cannot offer any amendments until we get the bill to the floor. So the majority leader is trying to bring up this bill to deal with housing because we have a housing crisis. It came out of the committee, everybody was ready to move on it, but he cannot get the motion to proceed approved. Now we are literally in no-man's land. We cannot offer amendments and cannot proceed on it.

The majority leader has one of two choices: He could wait for us to reach an agreement—if we ever reach an agreement—or file cloture. He should not have to do that. He should be able to offer the bill and offer amendments and get started. We cannot do that. We have to approve the motion to proceed first. So the majority leader tries to condense the clock. People complain that we are not getting work done, so he files cloture on the motion to proceed. As a result, we have to waste one full legislative day before we can get through to the vote on the cloture. If we get to the vote on the cloture—this is on the motion to proceed. This does not deny the right of any Member to offer any amendments, whether germane or not germane.

Let's say the majority wants to approve the motion to proceed and get 60 votes on the cloture—and, remember, this is the third legislative day. Let's say it is approved 95 to 1, because there was one objection. That's why we could not get the motion to proceed done. Now we are on the third legislative day and we have 30 hours of postcloture time. Another 2 days go by, and we are now on the bill, but we cannot debate the bill. We have not even started the amendments.

My friend from Alabama is saying he wants to deal with amendments. Well, I want to deal with amendments. Why do we have to waste all those days to get to the bill? That makes no sense at all. A lot of us think we should be able to bring up a motion to proceed. We have some recommendations on how we can expedite that and guarantee some amendments as part of the process. That is all part of what we have all been working on: How can we get the Senate back to its traditional way of considering legislation in a fair manner and making decisions?

At the end of the day, this is a democracy and the majority should be able to control the policy of this body. At the end of the day, it should be able

to do that. Certainly those who object should be on the floor telling why they are objecting. I think that is what we are trying to do. We are trying to get this process to work in a fair manner, and I understand we have to protect the rights of the minority.

My friend from Alabama raised a very good point. There are no guarantees of how long one party will be in the majority. We understand that. The political whim of Americans changes over time, political preferences change over time, and we have to make sure that the rules we operate under protect both the majority and the minority. That is absolutely important.

The Senate is a deliberative body, and we want to make sure that all rights are protected, including the minority. However, what is wrong is when one, two, or a small group of Senators can basically bring this institution to a halt. They have done that over the last couple of years at a time when we could have done more business. I think starting tomorrow we have a chance to change some of those procedures. I hope we will be able to get that done.

Senator UDALL has really brought these issues to light—whether it is the motion to proceed so we can start debate or whether it is how we can dispose of amendments, handle a filibuster, deal with court and other nominations, these are all important issues. How we deal with what we call comity, or respect of Senators, how Senators deal with objections, how they should be on the floor of the Senate to raise those objections, and how objections are done.

When a committee is considering a bill on the floor and the managers are considering that legislation—they have an orderly way to consider the amendments—and all of a sudden we hear one Senator objects and stops us from moving forward on amendments—well, that should not take place. If the Senator is going to object, have the Senator on the floor saying why he or she is objecting. Don't do it by saying we can stop consideration of the bill and go into a quorum call and lose all that valuable time.

I think there are some commonsense changes. I do hope we can get Democrats and Republicans joining together for these reforms. Whether Democrats or Republicans are in the majority, that is how the rules should work to protect all the Members of this institution.

Mr. UDALL of New Mexico. To the Senator from Maryland, I have one more question if he has time. First I want to respond as to the motion to proceed and what he has just talked about. This means we cannot get on legislation, as he laid out, for a large number of days. Sometimes we burn a week and several more days before we are able to get on to the bill.

The Senator by the name of Senator Pete Domenici, whom everybody knows very well, served for 36 years in the Senate and was my predecessor. He

served on bipartisan study groups to look at the rules. We have had many study groups such as that. They have always concluded that the motion to proceed should be short and significant, and we should get on to the bill.

Senator CARDIN has worked very hard to do the same with a bipartisan group to say: How can we make it work better? How do we make this institution work better? The reality is we get on to the bill, allow amendments, allow debate, and allow discussion. That is the way to move. On a number of occasions this has been bipartisan. I hope we can join together.

My question goes to a different part of the rules. As the Senator from Maryland knows—and we both served in the House together—today we have a Democratic Senate and a Republican House. The way to resolve differences between the two is to go to conference. That is the best way to bring the expertise of both bodies and the people in the bodies who know the substance of the legislation and bring them together if there are differences. If they both pass a bill, they get together, resolve those differences and then the respective Houses pass them and they go on to the President.

We now have in our rules for the Senate three debatable, filibusterable motions to go to conference. We look at them and we say: Well, they are basically about going to conference. Let's shrink down the proposals we are hearing. Why are we putting a filibuster in place to get into conference to try to resolve disputes?

I know the Senator has looked at this issue. My question is: If the Senate is able to pass a bill on housing—to use the housing example—and they are very different bills, but if we have smart people from the Senate and the House who are on the Housing Committee getting together—as the Senator from Maryland knows—we can resolve those differences. We can find the common ground and move forward.

I ask the Senator: Aren't our rules a little bit antiquated in terms of having three motions to go to conference and allow a filibuster on every one of those rules?

Mr. CARDIN. The Senator is absolutely right. I think when those rules were promulgated, the view was they would be done routinely and that there would never be a challenge to the action taken. The action is going to conference, appointing conferees, and instructing the conference. The Senator is absolutely right, they are all the same. It is getting us into conference where the House and Senate Members can be together, resolve their differences, and report a common bill back to both bodies. That is the whole purpose of a conference committee.

I think it is particularly important today that when we have the House controlled by Republicans and the Senate controlled by Democrats, we should use regular order. We should meet with our Republican-controlled delegations

with the Senate and try to resolve our differences in an open and transparent way that the rules apply.

Under the current rules, since each one of those is a separate action—as Senator UDALL pointed out—we can object to it being routinely approved. At that point, under the current rules, we can force—this is all precloture—a cloture motion being filed on each one of those three separate actions.

I already went over how much time it takes for a cloture motion to ripen. Let's assume we can get over that hurdle—which we cannot—each one of those cloture votes, even though they may be 99 to 1, will have 30 hours of postcloture. If we start to add it up, we are going to lose over a full week just to get into cloture, which obviously means we cannot get it to conference. We cannot use the deliberative process to resolve our differences and we cannot use the Senate unless we have unanimous consent, basically, and that is wrong.

So we do have a recommendation, and I am pleased the Senator pointed out that we are working with Republicans. We have had a group of Democrats and Republicans working together to try to resolve some of these differences, and I think there is general agreement to collapse those three motions into one motion so that at least we can eliminate the extra two votes and potential cloture votes and postcloture time which would be required. I think that is a relatively easy change for us to make. I don't know of anyone who objects to that. I have not heard of anyone who objects to that. I hope we could get that done.

When we start looking at where we could change the procedures and where we hope we could get bipartisan support, I think going to conference is one area on which we could get bipartisan support.

I agree with the Senator in that I have not heard of anyone who believes the motion to proceed has been used in the proper way. I think we can find a way to condense that. I hope we can. There have been some bipartisan recommendations to have orderly ways in which we could go to the motion to proceed immediately by certain guaranteed amendments or where the two leaders have agreed to go to a bill, so I think we could do that.

I think there has also been some agreement on the nomination to shorten the time so we can move that along. I think we have both Democrats and Republicans who are in agreement with that. I hope we can figure out a better way so we don't have to file all these cloture motions and waste a lot of time and those who object on the floor with the burden to debate the issue—I think that is the important reform that needs to be done.

Mr. UDALL of New Mexico. The Senator from Maryland has been here a little bit longer in the Senate than I have. Could the Senator talk about how many conferences we have done?

The Senator has served in the Maryland Assembly in the legislature. The Senator saw conferences all the time. I remember in my early days in the House, we had conferences all the time. My sense is the majority leader, in looking at this path to get to conference, has said, well, that takes too much time.

Mr. CARDIN. I probably am in a position that most of the Members of this body are not in. I have served on one conference committee—I have been here 6 years—and it was a successful conference committee. It dealt with the payroll tax extensions and some of the other changes. I was able to serve on that and we were able to reach a conference agreement and we were able to get our work done in a timely way. We got it done early by Senate standards and the legislative standards. I am trying to think if there were any other conferences that were reported back. I think we had one maybe on aviation that was reported back. I don't think there were more than a handful of conferences that have met in the last several congresses. There were maybe a couple each Congress. Think about how many bills were between the House and the Senate. It is a rarity. It is virtually not used. Interestingly enough, when it is used, we generally get better results, earlier results, and more open results.

I appreciate the Senator mentioning serving in the State legislature. I am a former speaker of the State legislature. I think we get better laws when we use the legislative process and have a more open process where the committees work and bring the bills to the floor, actually debate them and amend them on the floor of the Senate. That way when there are differences between the House and the Senate, they are worked out by the Members. They actually meet and work out their differences.

We are the ones who are accountable for the legislative process. It should not be some supercommittee or bargaining units that are set up by the President and the Congress. They should not be the ones. It should be the legislators who make these decisions, and that is why I think it is so important to get the committees functioning, get the floor of the Senate functioning, and get the conference committees functioning. I think if we can do that, we are going to get better laws, laws that make more sense, better understood, and that will stand the test of time. That is what I think all of us are trying to do.

We seek these jobs because we believe in our system. We believe in the richness of an independent legislature where we are held accountable for the work we have done. Quite frankly, it is difficult for us to get our work done in an accountable way if we don't have an open and transparent system. When we don't have conference committees that can function or we don't have committee work that can come to the floor of the Senate, then we are diminishing

our constitutional responsibility to the people who elected us.

Mr. UDALL of New Mexico. I thank very much the Senator from Maryland for his commitment to pursue these bipartisan rules changes to make sure the rules get changed. I know I reminded him about my predecessor, Senator Domenici. Senator Domenici would fight hard, and whenever he tried to look for bipartisan solutions, coming down to the motion to proceed, Democrats and Republicans said we have to get off this motion to proceed and we have to get on the bill. So I thank the Senator from Maryland.

Mr. CARDIN. The Senator from New Mexico has been the one who has brought this to us, and I know he has included others and certainly Senator MERKLEY has been in the forefront of this. The Senator from New Mexico has taken a real leadership role and he has done it in an open way. We want this done with Democrats and Republicans working together because we recognize the system only works when Democrats and Republicans can come together. That is why he has taken the time today on the floor of the Senate, and he has been very open about this issue. He has taken it to a lot of groups explaining the impact.

People ask us all the time: Why can't we do more to help the environment? Why can't we do more to help working families? Why can't we do more for affordable housing? Why can't we do more for affordable health care?

We say: We can't get that bill to the floor of the Senate.

They say: What are you talking about? You are a Senator. Bring it up on the floor of the Senate.

We heard Senator SESSIONS say the Senate can offer an amendment at any time. Just try.

We want the system to work. Whether a person is a Democrat or a Republican, we want the system to work. That is why we are taking this time today, at the end of the 112th Congress, to say: Look, what happens on Senate rules and procedures affects every person in this country.

I have talked to so many people who have come into my office with individual concerns, including families who are worried if their children will get the type of attention they need if perhaps they have a disability and they are working on a bill that will help, and they have all these cosponsors of the bill and they hear the committee reported it favorably and they are wondering why we can't act on it on the floor of the Senate. That is what is at stake. We can say to them: Oh, I am a cosponsor of that bill. I voted for that bill, but the bill didn't become law because of the process we have now.

That is what we have to correct. That is going to be our responsibility starting tomorrow, at noon, to deal with rules and procedures so we are in a position during the next 2 years to end the gridlock that has happened on

too many issues. Yes, the public understood somewhat the gridlock on the fiscal cliff. They don't understand the gridlock on that bill that affected that family with a child with a disability. They don't understand why that bill couldn't make it to the floor of the Senate. We understand that. What the Senator from New Mexico is doing is taking action so we can be held accountable and do our work in the most efficient way. I am proud to join him in these efforts and I urge all my colleagues to do everything we can in the next 24 hours so we can get progress made.

Look, we all know we are not going to get everything we want. This institution doesn't work that quickly, but let's make progress, and I think we can make progress in the 113th Congress.

I thank the Presiding Officer and I thank the Senator from New Mexico for their leadership.

Mr. UDALL of New Mexico. I thank the Senator from Maryland for his sincere effort to pursue bipartisan rules reform because I think, if we all work together, we can make the Senate a much better place.

I am reminded, when we have these discussions about the great traditions of the Senate, of two periods of time when the Senate truly stepped to the plate. We had crucial national issues facing us then and they were issues of war and peace. They were issues of terrible environmental destruction. The fact is the Senate, in its best traditions, stepped forward and acted and moved forward. One of those great traditions of the Senate acting occurred in the 40 years before the Civil War. People may not know it, but it was the Senate and the legislation that was passed through the Senate and signed by the President that for 40 years held the Union together. They held the country together, and they didn't let the country get into Civil War. It was people such as Webster and Calhoun and all the Senators at the time focusing on what the issues were. Whether it was the Missouri Compromise or some other issue that had to do with slavery, they found the common ground, and they held the Union together and they did it for 40 years.

That, my friends, is in the best traditions of the Senate, thinking and figuring out where the common ground is. We can't do that. We can't carry out that tradition unless we can get bills on the floor and we can amend them and have debate and then eventually get to a majority. Of course, we want the minority to be able to be heard, offer amendments, but the crucial fact is, at the end of the day, unless there is such a strong minority in terms of its activity, we get to a majority vote.

The other period of time where the Senate was in its glory days was in the 1960s and 1970s and we had huge national problems in terms of civil rights. We had lynchings going on, we had discrimination going on, including housing discrimination, discrimination in

public accommodations, and there was a big push to try to get rid of that in our society. It was the Senate that stepped forward and crafted civil rights legislation that allowed us to move forward.

Many people will remember in the 1970s, the glory days of the Senate, when we had environmental destruction, rivers catching on fire. The Wilderness Act, the Clean Water Act, the Clean Air Act, all those pieces of legislation were crafted in the Senate by people such as Senator Ed Muskie and Senator Stafford and others. They were Democrats and Republicans working with each other, but it was because we could get the legislation on the floor and work on it and amend it and move it forward and allow the deliberative process to work.

I submit the Senate has been at these two periods—and I am sure scholars and our Senate Historian and others can point out other periods—but these two periods struck me: the period of the 40 years before the Civil War when the Senate, in its deliberative way, held the Union together for 40 years and in the 1960s and 1970s when we addressed civil rights, environmental legislation, and many of the other big national issues we were facing.

So here we are as a country with the need for having a national energy policy, for dealing with issues such as climate change, protecting middle-class families, and trying to make sure we have job growth and economic development; doing everything we can to bring down the cost of health care but making sure our citizens have high-quality health care.

We face tremendous issues, and the Senate, in many cases, has been unable to act. We have been unable to act because the rules are being abused. This filibuster is not out in the open. It is secret, it is silent, and we have the opportunity to act on the first legislative day.

So on that first legislative day, I will offer a motion. It is a very simple motion my predecessor, Clinton Anderson, offered. He offered it for the 25 years he was in the Senate. On the first legislative day he would offer a motion. He would move to adopt the rules of the Congress—for him, whatever it was. So this motion dealing with tomorrow: move to adopt the rules for the 113th Congress and then we focus on it. We focus on what those rules should be.

I know our Republican friends realize, I know they understand the dysfunction and hopefully they will find a way to join with us to make the Senate a better place.

EXTENSION OF MORNING BUSINESS

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that morning business be extended until 5 p.m., with all other provisions remaining in effect.

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

RULES CHANGES

Mr. UDALL of New Mexico. I will finish by thanking my friend, a very close colleague on this particular issue, the Senator from Oregon. I know he has worked diligently on framing the talking filibuster, trying to bring it open, and make it the public process that will work for the whole Senate. He has been a key player in all the other rules reform, especially those two packages we put forward in the last Congress. I thank the Senator from Oregon and I thank the Senator from Maryland.

I now see on the floor the Senator from Illinois, who also has been here for a significant period of time. He has watched the rules operate, and I think he believes there has been a lot of abuse and we need to get down to the business of reforming these rules in a way that is going to work for the minority, because we know we will be in the minority sometime and work for the majority, so we can do the work of the American people.

I yield for the Senator from Illinois.

Mr. DURBIN. I thank the Senator from New Mexico and the Presiding Officer, the Senator from Oregon, for their leadership in talking about rules reform. They are relatively new to the Senate. I have been here a few years and I have seen a dramatic change, and it is not for the better.

I can recall when I came here fresh from the House of Representatives, as the Senator from New Mexico did, and I had my first amendment on the floor. A lady named Lula, who was the floor manager on the Democratic side, came up to help me, this brandnew freshman, with this first amendment. She said to me: So let me explain that you have 1 hour and then the Senator on the Republican side will have 1 hour.

I said: Well, is that equally divided?

She said: No, you have an hour.

To say to a Member of the House "you have an hour" is just unthinkable. You get an hour for a special order at 11 o'clock at night; otherwise, 60 seconds is considered to be a luxury in the House. I didn't know what to do with an hour and I certainly didn't use it all. But it is an example of a time when amendments came to the floor with real debate, and there was a Senator from South Carolina who opposed my amendment on the floor as well.

I can also remember coming to the floor and offering amendments literally on the spur of the moment on something I thought was worthy. I didn't always win, but that wasn't the point. I wanted to have debate and then a vote and it happened. Now that is almost unheard of. We go through these vote-athons, where we have these long series of amendments with 60 seconds of debate before the vote. It troubles me because that isn't what the Senate is supposed to be about.

I had a friend of mine in the House—the Senator from New Mexico probably heard of him—Mike Synar of Oklahoma. Mike Synar used to listen to Members of the House of Representatives whining and crying about the