

Statement of Senator Tom Udall
Reforming the Senate Rules
November 28, 2012

Mr. President, I rise today to talk about our efforts to change the Senate rules. There has been a great deal of comment on this subject lately.

I have listened with great interest to the arguments against these changes by the other side. Let me just say at the outset: Senators Merkley, Harkin, and I are *not* talking about taking away the rights of the minority. We are not *abolishing* the filibuster.

But, there must be change. The unprecedented use, and abuse, of the filibuster and other procedural rules has prevented the U.S. Senate from doing its job. We are no longer “the world’s greatest deliberative body.” In fact, we barely deliberate at all.

For most of our history the filibuster was used very sparingly. But, in recent years, what was rare has become routine. The exception has become the norm. Everything is filibustered. Every procedural step of the way with paralyzing effect. The Senate was meant to cool the process, not send it into a deep freeze.

For some reason, ever since the Democratic majority came into the upper chamber in 2007, the Senates of the 110th, 111th, and current 112th Congress have witnessed the three highest totals of filibusters ever recorded. A recent Brennan Center report found the current Senate has “passed a record-low 2.8 percent of bills introduced in that chamber, a 66 percent decrease from the last Republican majority in 2005-2006, and a 90 percent decrease from the high in 1955-1956.”

Our proposal to reform the rules is simple. It is limited. And it is fair. Again, we are not ending the filibuster. We preserve the rights of the minority. We are only proposing that:

1. Senators should be required to go to the floor and actually tell the American people why they oppose a bill or nominee in order to maintain a filibuster.
2. Motions to proceed to a bill, or to send a bill to conference, should be non-debatable.

These are sensible changes. And yet, we are warned that these simple reforms will transform the very character of the Senate and will leave the minority without a voice. These arguments are covers for continued abuse of the rules.

The reforms are modest. Some would say too modest. But, they would discourage the excessive use of filibusters. The minority still has the right to filibuster. But, not the right to do so by simply making an announcement. And then going out to dinner or, more likely, to a fundraiser.

Nevertheless, the other party insists we are attacking the rights of the minority. But, there seems to be another message too. With a truly odd logic. They say that if we make any reasonable changes in January, they may make radical ones in the future. In short, if we dare to reform any rule, they might throw out all of them when they are in the majority. How this comports with their stated concern for the rights of the minority is unclear.

It is also being argued that we are breaking the rules to change the rules. This has been repeatedly charged by the Minority Leader. We disagree. We are reforming the rules to save the Senate. The status quo is abusing the rules and debasing the Senate. It's a choice between rules reform and rules abuse.

History contradicts the Minority Leader as well. Members of the other side have agreed with changing the rules when they have been in the majority. The Record is already chock full with their past remarks. Fervent in their support for changing the rules with a simple majority vote.

This reminds me of a story my Uncle Mo used to tell. A former senator once said of himself that "never has the clammy hand of consistency rested upon my shoulder." He meant it too. On one occasion, he introduced a bill. And he pushed *very* hard for it. Then, seeing the tide was turning, he led the fight against his *own* bill. A constituent sent him a telegram that read "I thank God for your courageous stand." And he replied, "Which *one*?"

And so the question: how to change the rules? The Constitution is clear on this point. The Senate rules reforms can be accomplished by a simple majority at the start of the new Congress in January. This is the "constitutional option." Not a "*nuclear* option." That's something else and I will speak to it in a moment.

This has been a heated topic of debate this week on the Senate floor, particularly between the Majority and Minority Leaders. I've followed the debate carefully, and I'd like to address some of the distinguished Minority Leader's concerns.

Earlier this week, Leader McConnell said the following:

"This small group of primarily senate sophomores is now proposing that when the Senate gavels in at the beginning of the new Congress, a bare majority of senators can disregard the rule that says changes to the Senate's rules can only be approved on the same broad bipartisan basis we reserve for approving treaties and overriding presidential vetoes, a supermajority-plus."

I'm glad he framed our argument in this way. Why do treaties and veto overrides require a supermajority vote? Because those requirements are enshrined in our Constitution. The Constitution is very specific about when a supermajority is needed. And—just as clearly—when it isn't.

Article I, Section 5 of the U.S. Constitution states: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member." When the Framers required a supermajority in the proceedings of Congress, they explicitly stated so in the Constitution, as they did for expelling a member. On all other matters, such as determining the chamber's rules, a majority requirement is clearly implied.

The constitutional option has been used numerous times since the cloture provision was adopted in 1917; the last being in 1975 when it was the catalyst for amending the filibuster rule to its current form.

In 1957, then Vice President Richard Nixon noted while presiding in the Senate, “[W]hile the rules of the Senate have been continued from one Congress to another, the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of a previous Congress.”

Current Republican Senators agree. Senator John Cornyn said in 2003, “Just as one Congress cannot enact a law that a subsequent Congress could not amend by majority vote, one Senate cannot enact a rule that a subsequent Senate could not amend by majority vote.” And Senator Orrin Hatch noted in 2005 that a “simple majority can invoke cloture and adopt a rules change...it is clear that the Senate, at the beginning of a new Congress, can invoke cloture and amend its rules by simple majority.”

As I said earlier, some on the other side of the aisle have drawn a false equivalency between the constitutional option and the Republicans’ threatened “nuclear option” of 2005. Yet this misses a crucial distinction. The nuclear option sought to change Senate rules in mid-session. The constitutional option follows Senate precedent. And would change the rules only at the start of the new Congress.

We don’t have to reform the rules with only a majority vote in January. That is up to my colleagues on the other side of the aisle. Each time the filibuster rule has been amended in the past, a bi-partisan group of senators was prepared to use the constitutional option. But they didn’t have to. With the inevitability of a majority vote on the reforms looming, enough members agreed on a compromise. And passed the changes with two-thirds in favor.

We could do that again in January. I know many of my Republican colleagues agree with me. The Senate is not working. I said two years ago that I would push for the same reforms at the beginning of the next Congress--regardless of which party was in the majority. If Leader McConnell was going to be the majority leader in January, I would ask him to work with me on implementing these reforms.

I will say again. The proposed changes will reform the abuse of the filibuster, not trample the legitimate rights of the minority party. I am willing to live with all of the changes we are proposing, whether I am in the majority or minority.

The other side has suggested that a change in the rules is an affront to the American public. But, the real affront would be to allow the abuse of the filibuster to continue.

It has also been suggested that “the campaign is over.” Well, this effort to change the rules has something to do with the *results* of the campaign. The American people sent us a message. We have to change the way we do business. We have to govern. And pay attention to jobs and the

economy. And the things that matter to American families. That was their message. And we would do well to listen to it.

As to the comment that some of the reformers are “sophomores.” True enough. Senator Merkley and I are relatively new to this chamber. But, I don’t think the American people think that is a bad thing. Because we came here to find solutions. To actually get things *done* for the American people. But what we found was a graveyard of good ideas. No real debate. No real consideration.

Under the abuse of the current rules, all it takes to filibuster is one senator picking up the phone. Period. Doesn’t have to even go on the floor and defend it. Just a phone call by *one* senator. No muss. No fuss. No inconvenience. *Except* for the American public. *Except* for a nation that expects and needs a government that works. A government that actually works together and finds common ground.

Maybe some of my colleagues believe that the Senate *is* working as it should. That everything is fine. Well, Mr. President, we sophomores do *not* take that view. It isn’t working. It needs to change. And I know plenty of experienced Senators agree.

The American people, of all political persuasions, are clamoring for a government that actually gets something done. The challenges are too great, the stakes are too high, for a government of gridlock to continue.