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Final Senate Floor Speech



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Madam President:

This is not farewell address but rather a closing argument to a jury of my colleagues and the American people outlining my views on how the Senate -- and with it the Federal Government -- arrived at its current condition of partisan gridlock, and my suggestions on where we go from here on that pressing problem and the these key issues of national and international importance.

To make a final floor statement is a challenge. The Washington Post noted the poor attendance at my colleagues' farewell speeches earlier this month. That is really not surprising since there is hardly anyone ever on the Senate floor. The days of lively debate with many members on the floor are long gone. Abuse of the Senate rules has pretty much stripped senators of the right to offer amendments. The modern filibuster requires only a threat and no talking. So the Senate's dominant activity for more than a decade has been the virtual[ly] continuous drone of a quorum call.

But that's not the way it was when Senator Chris Dodd and I were privileged to enter the world's greatest deliberative body 30 years ago. Senators on both sides of the aisle engaged in collegial debate and found ways to find common ground on the nation's pressing problems. When I attended my first Republican moderates luncheon, I met Mark Hatfield, John Chafee, Ted Stevens, Mac Mathias, Bob Stafford, Bob Packwood, Chuck Percy, Bill Cohen, Warren Rudman, Alan Simpson, Jack Danforth, John Warner, Nancy Kassenbaum, Slade Gorton -- and I found my colleague John Heinz there. That's a far cry from later years when the moderates could fit into a telephone booth.



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On the other side of the aisle, I found many Democratic senators willing to move to the center to craft legislation: Scoop Jackson, Joe Biden, Dan Inouye, Lloyd Bentsen, Fritz Hollings, Pat Leahy, Dale Bumpers, David Boren, Russell Long, Pat Moynihan, George Mitchell, Sam Nunn, Gary Hart, Bill Bradley, and others.

They were carrying on the Senate's glorious tradition. The Senate's deliberate, cerebral procedures have served our country well. The Senate stood tall in 1805 in acquitting Supreme Court Justice Samuel Chase in impeachment proceedings and thus saved the preserved -- preserve the independence of the federal judiciary. The Senate stood tall in 1868 to acquit President Andrew Johnson in impeachment proceedings, and that preserved the power of the Presidency. And repeatedly, in our-223 year history the Senate has cooled the passions of the moment to preserve the institutions embodied in our Constitution which have made the United States the envy of the world.

It has been a great privilege to have had a voice for the last 30 years in the great decisions of our day: how we allocate our resources among economic development, national defense, education, environmental protection and NIH funding; the Senate's role in foreign policy (as we exercise it now on the START Treaty); the protection of civil rights (as we demonstrated last Saturday, eliminating "Don't ask, don't tell"); balancing crime control and defendants' rights; and how we have maintained the quality of the federal judiciary -- not only the high profile 14 Supreme Court nominations that I have participated in but the 112 Pennsylvanians who have been confirmed during my tenure on the District Courts or Third Circuit.

On the national scene, top issues are the deficit and national debt. The Deficit Commission has made a start. When raising the debt limit comes up next year, that will present an occasion to pressure all parties to come to terms on future taxes and expenditures to realistically deal with these issues.

Next, this Congress should try to stop the Supreme Court from further eroding the Constitutional mandate of separation of powers. The Supreme Court has been eating Congress's lunch by invalidating legislation with judicial activism after nominees commit under oath in confirmation proceedings to respect Congressional fact finding and precedents -- that is, *stare decisis*. The recent decision in *Citizens United* is illustrative. Ignoring a massive Congressional record and reversing recent decisions, Chief Justice Roberts and Justice Alito repudiated their confirmation testimony given under oath and provided the key votes to permit corporations and unions to secretly pay for political advertising -- thus effectively undermining the basic democratic principle of the power of one person/one vote. Chief Justice Roberts promised to just call balls and strikes and then he moved the bases.

Congress's response is necessarily limited in recognition of the importance of judicial independence as the foundation of the rule of law. But Congress could at least require televising the Court proceedings to provide some transparency to inform the public about what the Court is doing since it has the the final word on the cutting issues of the day.



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Brandeis was right when he said that sunlight is the best disinfectant. The Court does follow the election returns and the Court does judicially notice societal values as expressed by public opinion. Polls show 85% of the American people favor televising the Court when told that a citizen can only attend an oral argument for three minutes in a chamber holding only 300 people. Great Britain, Canada, and state supreme courts permit television.

Congress has the authority to legislate on this subject just as Congress decides other administrative matters like what cases the Court must hear, time limits for decisions, number of justices, the day the Court convenes, and the number required for a quorum. While television cannot provide a definitive answer, it could be significant and may be the most that can be done consistent with life tenure and judicial independence.

Additionally, I urge Congress to substantially increase funding for the National Institutes of Health. When NIH funding was increased from 12 to 30 billion dollars annually, and 10 billion dollars added to the stimulus package, significant advances were made on medical research. It is scandalous -- absolutely scandalous -- that a nation with our wealth and research capabilities has not done more. Forty years ago, the President of the United States declared war on cancer. Had that war been pursued with the diligence of other wars, most forms of cancer might have been ~~Congress~~ [conquered].

I also urge my colleagues to increase their activity on foreign travel. Regrettably, we have earned the title of "Ugly Americans" by not treating other nations with proper respect and dignity. My experience to CODELS -- that is, Congressional Delegations -- to China, Russia, India, NATO, Jerusalem, Damascus, Baghdad, Kabul, and elsewhere provided an opportunity for eyeball-to-eyeball discussions with world leaders about our values, our expectations, and our willingness to engage in constructive dialogue. Since 1984, I have visited Syria almost every year. And my extensive conversations with Hafiz al-Assad and Bashar al-Assad have convinced me that there is a realistic opportunity for a peace treaty between Israel and Syria if encouraged by vigorous United States diplomacy. Similar meetings that I have been privileged to have with Muammar Gaddafi, Yasser Arafat, Castro, Saddam Hussein, Hugo Chavez have persuaded me that candid, respectful dialogues with our toughest adversaries can do much to improve relations among nations.

Now, I'm going to shift gears.

In my view, a principle reason for the historic stature of the United States Senate has been the ability of any Senator to offer virtually any amendment at any time. This Senate Chamber provides the forum for unlimited debate with the potential to acquaint the people of America and the world about innovative proposals on public policy and then have a vote on the issue.

Regrettably, that has changed in recent years because of abuse of the Senate rules by both parties. The Senate rules allow the Majority Leader, through the right of his first recognition, to offer a series of amendments to prevent any other senator from offering an amendment.



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That had been done infrequently up until about a decade ago and lately has become a common practice, and again, by both parties.

By precluding other Senators from offering amendments, the Majority Leader protects his party colleagues from taking tough votes. Never mind that we were sent here and paid to make tough votes. The inevitable and understandable consequence of that practice has been the filibuster. If a Senator cannot offer an amendment, why vote to cut off debate and go to final passage? Senators were willing and are willing to accept the will of the majority in rejecting their amendments, but unwilling to accept being railroaded to concluding a bill without being provided an opportunity to modify it. That practice has led to an indignant, determined minority to filibuster and deny the 60 votes necessary to cut off debate. Two years ago on this Senate floor, I called the practice "tyrannical".

The decade from 1995 to 2005 saw the nominees of President Clinton and President Bush stymied by the refusal of the other Party to have a hearing or floor vote on many judicial and executive nominees. Then in 2005, serious consideration was given by the Republican Caucus to changing the long standing Senate [filibuster rule] by invoking the so called "nuclear" or "constitutional option". The plan called for Vice President Cheney to rule that 51 votes were sufficient to impose cloture for confirmation of a judge or executive nominee. His ruling, then to be challenged by Democrats, would be upheld by the traditional 51 votes to uphold the Chair's ruling.

As I argued on the Senate floor at that time, if Democratic Senators had voted their consciences without regard to party loyalty, most filibusters would have failed. Similarly, I argued that had Republican Senators voted their consciences without regard to party loyalty there would not have been 51 of the 55 Republican Senators to support the nuclear option.

The Majority Leader then scheduled the critical vote on May 25th, 2005. The outcome of that vote was uncertain with key Republicans "undeclared". The showdown was averted the night before by a compromise by the so called "Gang of 14". Some nominees were approved, some rejected, and a new standard was established to eliminate filibusters unless there were "extraordinary circumstances" with each Senator to decide whether that standard had been met. Regrettably again, that standard has not been followed, as those filibusters have continued in up to today. And again, the fault rests with both parties.

There is a way out of this procedural gridlock by changing the rule on the power of the Majority Leader to exclude other Senators' amendments. I proposed such a rule change in the 110th and 111th Congress[es]. I would retain the 60 vote requirement for cloture on legislation with the condition that Senators would have to have a talking filibuster, not merely present a notice of intent to filibuster. By allowing Senators to offer amendments and a requirement for debate, not just notice, I think filibusters could be effectively managed as they had been in the past and still [be] retained where necessary the opportunity to have adequate debate on controversial issues.



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I would change the rule to cut off debate on judicial and executive branch nominees to 51 votes as I formally proposed in the 109th Congress. Important positions are left open for months -- and the Senate agenda today is filled with unacted upon judicial and executive nominees -- and many of those judicial nominees are in areas where there are some emergency backlogs. Since Justice Bork and -- pardon me, what a mistake. Since Justice Bork and Justice Thomas did not provoke filibusters, I think the Senate can do without them on judges and executive office holders. There is a sufficient safeguard of the public interest by requiring a simple majority on an up/down vote. I would also change the rule requiring 30 hours of post-cloture debate and the rule allowing the secret "hold" which requires cloture to bring the matter to the floor. Requiring a Senator to disclose his or her "hold" to the light of day would generally curtail this abuse.

While political gridlock has been facilitated by the Senate rules, I'm sorry to say that partisanship has been increased greatly by other factors. Senators have gone into other states to campaign against incumbents of the other Party. Senators have even opposed their own primary -- Senators have even opposed their own Party colleagues in primary challenges. That conduct was beyond contemplation in the Senate that I joined 30 years ago. Collegiality can obviously not be maintained when negotiating with someone simultaneously out to defeat you, especially within your own Party.

In some quarters, "compromise" has become a dirty word. Senators insist on ideological purity as a precondition. Senator Margaret Chase Smith of Maine had it right when she said we need to distinguish between the compromise of principle and the principle of compromise. This great body was created through the so-called "Great Compromise," in which Framers decreed that states would be represented equally in the Senate and proportionate to their populations in the House. As Senate historian Richard Baker noted (quote) "Without that compromise, there would likely have been no Constitution, no Senate, and no United States as we know it today."

Politics is no longer the art of the possible when Senators are intransigent in their positions. Polarization of the political parties has followed. President Reagan's "Big Tent" has frequently been abandoned by the Republican Party. A single vote out of thousands cast can cost an incumbent his seat. Bob Bennett, Senator Bob Bennett, was rejected by the far right in his Utah primary because of his vote for TARP. It did not matter that Vice President Cheney had pleaded with the Republican caucus to support TARP or President Bush would become a modern Herbert Hoover. It did not matter that 24 other Republican Senators -- besides Bob Bennett -- out of the 49 Republican Senators also voted for TARP. Senator Bennett's 93% conservative rating was insufficient. Senator Lisa Murkowski lost her primary in Alaska. Congressman Mike Castle was rejected in Delaware's Republican primary -- Republican primary in favor of a candidate who thought it necessary to defend herself as not being a witch. Republican Senators contributed to the primary defeats of Bennett, Murkowski, and Castle. Eating or defeating your own is a form of sophisticated cannibalism. Similarly, on the other side of the aisle, Senator Joe Lieberman, a great Senator, could not win his Democratic primary.



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The spectacular re-election of Senator Lisa Murkowski on a write-in vote in the Alaska general election and the defeat of other Tea Party candidates in the 20[10] general elections may show the way to counter right-wing extremists. Arguably, Republicans left three seats on the table in 2010 -- beyond Delaware and Nevada and perhaps Colorado -- because of unacceptable general election candidates. By bouncing back and winning, Senator Murkowski demonstrated that a moderate/centrist can win by informing and arousing the general electorate. Her victory proves that America still wants to be and can be governed by the center.

Repeatedly, senior Republican Senators have recently abandoned long held positions out of fear of losing their seats over a single vote or because of Party discipline. With 59 votes for cloture on this [Democratic] side of the aisle, not a single Republican would provide the 60th vote for many important legislative initiatives such as identifying campaign contributors to stop secret contributions.

Notwithstanding the perils, it is my hope that more Senators will return to greater independence in voting and crossing Party lines evident 30 years ago. President Kennedy's *Profiles in Courage* shows the way. Sometimes Party does ask too much. The model for an elected official's independence in a representative democracy has never been stated more accurately, in my opinion, than it was in 1774 by Edmund Burke in the British House of Commons, when he said (quote):

...his [the elected representative's] unbiased opinion, his mature judgment, his enlightened conscience...[including his vote] ought not to be sacrificed to you, [to] any man or any set of men living.

But above all, we need civility. Steve and Cokie Roberts, distinguished journalists, put it well in a recent column, saying (quote):

Civility is more than good manners...Civility is a state of mind. It reflects respect for your opponents and for the institutions you serve together...This polarization will make civility in the next Congress more difficult -- and more necessary -- than ever.

A closing speech has an inevitable aspect of nostalgia. An extraordinary experience for me is coming to an end. But my dominant feeling is pride in the great privilege to be a part of this unique body with colleagues who are such outstanding public servants.

I have written and will write elsewhere about my tenure here, so I do not say "farewell" to my continuing involvement in public policy, which I will pursue in a different venue. Because of the great traditions of this body, and because of its historical resilience, I leave with great optimism for the future of our country and great optimism for the continuing vital role of the United States Senate in the governance of our democracy. I thank my colleagues for listening.