

Stenographic Transcript  
Before the

COMMITTEE ON  
RULES AND ADMINISTRATION

## **UNITED STATES SENATE**

MARKUP: IMPROVING PROCEDURES FOR THE  
CONSIDERATION OF NOMINATIONS IN THE SENATE

Wednesday, April 25, 2018

Washington, D.C.

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6   U.S. Senate

7                               Committee on Rules and Administration

8   Washington, D.C.

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10           The committee met, pursuant to notice, at 3:34 p.m.,  
11   in Room SR-301, Russell Senate Office building, Hon. Roy  
12   Blunt, chairman of the committee, presiding.

13           Present:   Senators Blunt [presiding], Shelby,  
14   McConnell, Alexander, Roberts, Cruz, Capito, Wicker,  
15   Fischer, Hyde-Smith, Klobuchar, Durbin, King, and Cortez  
16   Masto.

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1                   OPENING STATEMENT OF SENATOR BLUNT

2           The Chairman. A quorum being present, the Committee  
3 on Rules and Administration will come to order.

4           I am pleased to see my colleagues here and our  
5 visitors here. This is the second time I have had a chance  
6 to chair this committee, and I am glad to return to the  
7 chairmanship of the committee.

8           I am particularly fortunate that Senator Klobuchar is  
9 my ranking member. She and I have worked on a lot of  
10 things together and look forward to continuing to do that.  
11 And some of those things will be right before this  
12 committee that we are able to be the chair and ranking  
13 member of.

14          I am pleased to welcome Senator Hyde-Smith to the  
15 committee. Senator, you follow in the footsteps of lots of  
16 Mississippians who have been on this committee -- Senator  
17 Stennis, Senator Lott, Senator Cochran, and of course, your  
18 colleague Senator Wicker on the committee. So a long  
19 history of service on the Rules Committee of Mississippi  
20 Senators, and we are glad to have you join that.

21          This afternoon, we meet to mark up Senate Resolution  
22 355, a resolution for improving procedures for the  
23 consideration of nominations in the Senate. Senator  
24 Lankford introduced this resolution in December of 2017. I  
25 think he has talked to virtually every member of the

1 Senate, Democrat and Republican, about it, and his work  
2 here we appreciate.

3 The committee held a hearing on the resolution  
4 December 19, 2017. The text of the resolution was taken  
5 from a resolution that passed 78 to 16 in the 113th  
6 Congress. Senator Lankford has proposed a simple  
7 resolution that, if adopted, would allow the Senate to vote  
8 on nominees in a streamlined manner.

9 Once a majority of the Senate decided to end debate,  
10 Senators would still be allowed to speak about all but the  
11 most serious -- the Senators would still be allowed to  
12 speak on all but the most senior executive and judicial  
13 nominees for 8 hours, and with the most senior nominees,  
14 they would still be allowed to have debate for up to 30  
15 hours. District judges, as they did in 2013 and 2014,  
16 would go to an 8-hour debate.

17 I support the resolution and look forward to today's  
18 discussion and a vote to send to the floor for the Senate's  
19 consideration.

20 Senator Lankford's resolution addressed two main  
21 issues all Senators, regardless of party, should care  
22 about. First of all, we should agree that the President  
23 should be able to appoint officials to carry out their  
24 agenda. Excessive and unproductive delays in that process  
25 thwart the will of the voters and, frankly, make it harder

1 for the newly elected President particularly to take  
2 control of the Government. Our citizens are all well  
3 served when we have agencies with leaders and aren't well  
4 served when we have agencies without leaders.

5 And second, the floor of the Senate should be used for  
6 more than nominations. In the current Congress, 20 percent  
7 of nominations where cloture was filed eventually passed  
8 with votes that were 90 or more and a few voice votes. So  
9 the point would be that in these nominations where we have  
10 the delay, we have the theoretical debate, still have huge  
11 votes for confirmation.

12 Today's discussion and debate is important, I think,  
13 for the future of the Senate. I think Senator Klobuchar  
14 and I both want this committee to be a committee that leads  
15 us to having a Senate that functions better in every way,  
16 both the administrative parts and the rule parts of that.

17 And Senator Klobuchar, I am pleased to recognize you  
18 for some comments.

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1 STATEMENT OF SENATOR KLOBUCHAR

2 Senator Klobuchar. Thank you very much, Chairman  
3 Blunt, and welcome back as chair of the committee.

4 And I also congratulate Senator Shelby on his new  
5 position as chair of Appropriations. I enjoyed working  
6 with him.

7 And welcome to Senator Hyde-Smith.

8 Mr. Chairman, as you have noted, over the years, we  
9 have had success working together on the Commerce Committee  
10 and issues ranging from tourism to transportation to  
11 adoption, and we have proven that working together can be  
12 good not just for Minnesotans and Missourians and people  
13 that come from "M States" like Mississippi, but all States.

14 Just last week, we found something that we could agree  
15 on, and that was a baby. That was a nice moment. Thank  
16 you, Senator McConnell. And that was just an example  
17 where, Senator Blunt, we worked together to make a simple  
18 change to accommodate a new mother.

19 And also I know this is Senator Lankford's proposal,  
20 and while I don't agree with this specific proposal at this  
21 moment in time, we have worked together on getting the  
22 funding for the election security for the States in just  
23 the last budget, over \$380 million. And again, thank you  
24 to the Majority Leader and to Senator Schumer for their  
25 support on that as well.

1           When I first came to the Senate, one of our major  
2       pushes was for ethics reform. We had some violations that  
3       had occurred through the Congress, and we got that bill  
4       done. In 2010, I strongly supported the practice of ending  
5       secret holds. And last year, with both leaders working  
6       with us, Senator Shelby and I worked with members of the  
7       committee, including Senator Cortez Masto, on legislation  
8       -- and Senator Capito -- requiring sexual harassment  
9       training in the Senate.

10           However, for this proposal before us today, I feel  
11       that this is not the right moment to make this permanent  
12       change. The Senate, as the world's greatest deliberative  
13       body, is designed for the careful consideration and debate  
14       of proposed laws and nomination.

15           Only once in the history of the cloture process has  
16       the Senate voted to permanently change the time we have to  
17       debate an issue. That was back in 1986, when we went from  
18       100 hours of post-cloture debate time to the current rule  
19       of 30 hours. The resolution we are considering today asks  
20       us to make a second permanent change.

21           As Senator Lankford noted, following years of failing  
22       to get nominees confirmed, the Senate did vote 78 to 16, as  
23       Senator Blunt also noted, to temporarily change the rules  
24       on post-cloture debate in 2013. But it is important to  
25       understand that in 2013, the circumstances were very

1 different than they are today.

2 First, there were important procedural protections in  
3 place at that time. Nominations required a 60-vote  
4 threshold, the blue slip process for judicial nominations  
5 was respected, and a thorough process to select qualified  
6 nominees from the administration was in place.

7 Second, it was a time of historic gridlock over  
8 judicial nominations compared to today. Just 22 judicial  
9 nominees were confirmed during President Obama's last 2  
10 years in office, the fewest in a Congress since Harry  
11 Truman was President. Did that for you, Missouri.

12 In stark contrast to 2013, last year was actually a  
13 record-breaking year for advancing judicial nominees.  
14 Leader McConnell highlighted the fact that, "Senate  
15 Republicans are closing in on the record for the most  
16 circuit court appointments in a President's first year in  
17 office."

18 In his first year, President Trump confirmed 19  
19 judges, compared to just 13 for President Obama in the same  
20 time period. Of the judges confirmed last year, 12 were  
21 circuit court judges, the most confirmed in the first year  
22 of any presidency since the Federal appellate courts were  
23 established.

24 As a member of the Judiciary Committee, I have seen  
25 the process and pace at which these nominees are being

1 advanced. The Judiciary Committee reported 44 judicial  
2 nominees to the Senate floor last year, but in President  
3 Obama's first year in office, we reported just 23 nominees.

4 My third and last point is that we are actually not  
5 using the 30 hours of post-cloture debate time. Of the 86  
6 nominations on which the Senate invoked cloture in the  
7 115th Congress, only 2 nominations used 20 or more hours  
8 post cloture, and 74 nominations used 8 or fewer hours post  
9 cloture.

10 To address the issue back in 2013, a bipartisan  
11 supermajority of the Senate supported a temporary change to  
12 the rules. This is not what is before this committee  
13 today. During the 115th Congress, it has been critical  
14 that the Senate have time to thoroughly vet and consider  
15 potential nominees.

16 For example, Matthew Petersen, a nominee to a district  
17 court judge, was unable to answer basic legal questions  
18 posed by a Louisiana Republican, Senator Kennedy. And he  
19 was just one of the more than 25 nominees that was  
20 withdrawn by this administration.

21 The American people deserve qualified judges. I have  
22 worked well on our judges in Minnesota and have supported  
23 the judges, after discussion, that the administration has  
24 put forth. This can work, but it has not worked in all  
25 cases. And that is why we believe because of vetting

1 issues and also because of the time that we need to look at  
2 certain judges and administration nominees that have not  
3 been adequately considered, we think this is a very bad  
4 time to change this rule, which would be only the second  
5 time permanently in history.

6 Thank you very much, Mr. Chairman.

7 The Chairman. Thank you, Senator Klobuchar.

8 So this morning, this is a committee of senior members  
9 certainly, and I don't want to prohibit members from saying  
10 anything they would like to say. I have asked both Senator  
11 Durbin and Senator Alexander, who have been in these  
12 negotiations before, if they would like to make a few  
13 comments.

14 And the Majority Leader is here, and so, Senator  
15 McConnell, if you want to start with your comments? Then  
16 we will go to Senator Durbin and Senator Alexander and --

17 Senator McConnell. Yes, I think, Mr. Chairman, I will  
18 yield to Senator Alexander, who was in the middle of the  
19 discussion --

20 The Chairman. Okay.

21 Senator McConnell. -- in 2013, leading to the 2-year  
22 standing order.

23 I might just -- to put it in context, at the time, we  
24 were trying to discourage the Majority Leader from using  
25 the "nuclear option," which had been threatened on a number

1 of occasions. And so in order to take the steam out of  
2 that issue, it was an overwhelming vote to go to the 2-year  
3 standing order, which is essentially the Lankford proposal  
4 that is before us today.

5 Obviously, it didn't work very well because 6 months  
6 later, in his desire to stack the D.C. Circuit, the  
7 Majority Leader recommended to his party that the nuclear  
8 option be used and that the threshold be lowered for every  
9 appointment except the Supreme Court. So that fully puts  
10 that episode in context.

11 What we are talking about now, it strikes me, is  
12 wasting the Senate's time, and we have all got a long list,  
13 I will spare all of you, of appointments that we had to  
14 file cloture on, we had to use post-cloture time, and then,  
15 when we finally got to the vote, there was little or no  
16 opposition. So we are just sort of pointless wasting time,  
17 even when we know what the outcome is going to be, is what  
18 we are talking about here today.

19 We in the majority know we can get the outcome. At  
20 some point, the question is, what is constructive use of  
21 the Senate's time sitting around post cloture waiting to  
22 pass somebody 97 to 1? That is the issue before us.

23 With that, Mr. Chairman, I would like to yield to  
24 Senator Alexander.

25 The Chairman. Senator Alexander and then Senator

1 Durbin.

2 Senator Alexander. I have got one of these chairs  
3 that they give to witnesses so they are having to look up  
4 like this when they talk.

5 Thank you, Mr. Chairman and Senator McConnell, Senator  
6 Durbin, Amy.

7 I was trying to think of what I could say today that  
8 would be constructive in a time of some partisan stalemate,  
9 and I brought a picture with me of the Senate doing  
10 nothing, which is what happens when we do what we are doing  
11 right now, nominate Derek Kan on a Thursday to be Under  
12 Secretary of Transportation. A week later, we vote to cut  
13 off debate, and then the next Monday, we confirm him, but  
14 only one Senator speaks.

15 Or a district judge from Georgia. Cloture on  
16 Wednesday, a week later cut off debate, confirm him the  
17 next day. No Senator speaks.

18 The problem with that is, obviously, people look at C-  
19 SPAN and say, "Well, they are doing nothing. They are as  
20 bad as we thought." That is one problem.

21 But let me see if I can say this. I would like to see  
22 if there is any way I can resurrect the bipartisan spirit  
23 that existed in 2011, '12, and '13, when a group of former  
24 White House counsels, Democrat and Republican, came to me  
25 and said could we do something about the tradition of

1    "innocent until nominated"? The difficulty of nominating  
2    and confirming presidential appointees.

3           Now we had President Obama, a Democrat, and a  
4    Democratic majority in the Senate. I am a Republican  
5    Senator. So I said, yes, I would like to try that.

6           And I worked with a bipartisan group of Senators --  
7    Senator Durbin, Senator Schumer, Senator McCain, Senator  
8    Levin, Senator Barrasso. And in each of those 3 years, we  
9    took some steps to try to improve the presidential  
10   nominating process. And we did some pretty important  
11   things. We eliminated 163 positions. They don't have to  
12   be confirmed. We took 272 more and said they are  
13   privileged. You can move them through more rapidly.

14          We eliminated secret holds. That took 17 years for  
15   Senator Grassley. We eliminated 3,000 noncontroversial  
16   positions, and for 2 years, we said for sub-Cabinet  
17   members, 8 hours of post-cloture debate and for district  
18   judges, 2 hours of post-cloture debate.

19          Senator Reid really wanted us to do that. Senator  
20   McConnell didn't really want to do it. But we did it  
21   anyway because we thought that it was good for the Senate  
22   as an institution. So we did that.

23          Now here we are. Here we are today. And back then, I  
24   remember Senator Schumer saying who in America doesn't  
25   think a President, Democrat or Republican, deserves his or

1 her picks for anybody for who should run the agencies? He  
2 said everybody believes that.

3 So everyone knows where we are right now. Democrats  
4 feel aggrieved for a variety of reasons. So their tactic  
5 is to slow down the Senate by taking a long period of time  
6 to consider the President's nominees. He has a lot stacked  
7 up. I just left an Appropriations Committee subcommittee  
8 hearing. I think the Department of Justice has 14 of its  
9 nominees who have been reported out of the committee but  
10 haven't been able to come to the floor.

11 So where does this lead us? Well, I think I am afraid  
12 I know. What happens is if one party abuses the rules, the  
13 other party takes notes, and they do the same thing. I  
14 mean, Democrats brought circuit judges for the first time  
15 in 2003. So we did it in 2011. The Democrats used the  
16 nuclear option in 2013. So we did it in 2017.

17 Now Democrats are making it virtually impossible for  
18 President Trump to fill his administration. And what do  
19 you think will happen when we have a Democratic President?  
20 It doesn't take many Republican Senators to take notes to  
21 remember that.

22 I think I know what happens. What happens is one  
23 party or the other will say we can't put up with this. We  
24 are going to change the rules with 51 votes to make this  
25 happen, and we are going to gradually move into an

1 institution where the majority can do anything it wants to,  
2 whenever it wants to, and what Senator Levin warned us was  
3 that when we do that, we become a Senate without rules.

4 I have had a number of Democratic members tell me the  
5 one vote that they wished they had never cast since they  
6 have been in the Senate is the vote on the nuclear option  
7 because of not just what that did, but what that then  
8 caused the Republicans do to.

9 So I would like to turn this around and head back in  
10 the other direction, and I think Senator Lankford has the  
11 right approach, which is let us take relatively reasonable  
12 proposal that we adopted once before and adopt it as a  
13 rules change in the right way and avoid piling on nuclear  
14 option after nuclear option after nuclear option, which is  
15 a prelude to the destruction of the United States Senate as  
16 a consensus-building institution in this country.

17 That is exactly what it is. It is kind of like the  
18 lead-up to World War I, which everybody agrees, I think,  
19 was an accidental war. Could have been stopped, but nobody  
20 would stop it. It just kept going in that -- going in that  
21 direction.

22 So I would appeal to my Democratic colleagues to look  
23 at the Langford proposal. If you can't vote for it, think  
24 of some version of it that you could vote for that would  
25 stop this prelude to destruction of the Senate as a

1 consensus-building institution.

2       If there ever was a time when our country needed a  
3 consensus-building institution, it is right now. We are  
4 fractured. We are an Internet democracy. We have partisan  
5 impulses coming out our ears. We have plenty of that.  
6 What we don't have is an ability to work across party  
7 lines.

8       All of us have done it. We talk about it in private.  
9 We pray about it on Wednesday morning at our prayer  
10 meeting. But when we get out in public again, it gets  
11 harder to do. So my hope would be that we could go back  
12 and resurrect some of that spirit of 2011, '12, and '13 and  
13 find some way to end this prelude toward destruction of the  
14 Senate as a consensus-building institution.

15       I like the Langford proposal because it does what we  
16 did before, and I don't know why we don't do it again.

17       Thank you, Mr. Chairman.

18       The Chairman. Thank you, Senator Alexander. Senator  
19 Durbin?

20       Senator Durbin. Thanks, Mr. Chairman.

21       And most of us remember in history that moment when  
22 Abraham Lincoln contacted General McClellan and said if you  
23 are not going to use your Army, can I use it to wage the  
24 Civil War? I thought about that because there was a  
25 suggestion in our caucus that we consider leasing out the

1 Senate chamber for events, wedding receptions and the like,  
2 since we are not using it that much. And there is a lot of  
3 free time on the floor, as Senator Alexander has noted with  
4 the photograph that he brought.

5 I would say that Lamar Alexander is correct. We can  
6 reach a standoff in a hurry on this question of filling  
7 vacancies. You know, I will trump you with how many  
8 judicial nominees got through the last 2 years of Barack  
9 Obama. You will come back to us with a grievance about the  
10 current matter. I will bring up Merrick Garland. We will  
11 go through this one after the other, and at the end of the  
12 day, we are at a standstill in the situation.

13 I have been here a few years, and some of you have,  
14 too. And it is hard to explain to newer member of the  
15 Senate what the Senate used to be like when we actually  
16 used the floor of the Senate for debate and amendments. It  
17 was a regular occurrence, and it was exciting.

18 There were tough votes there. Don't get me wrong.  
19 And some of them you thought would kill you in the next  
20 election. They didn't, but you thought they would. And it  
21 really was what the Senate was about. It truly was  
22 deliberative, and there was real debate going on there.

23 I long for that. I try to explain to younger members  
24 what it was like. They cannot believe that they could come  
25 to the floor and offer an amendment and get a vote the same

1 day. Just beyond their belief such a thing would happen.

2 I did it. Most of us who have been around for a while  
3 did it. It was considered normal around here. Now it is  
4 completely beyond our reach, or appears to be.

5 I have one glimmer of hope. I don't support Senator  
6 Lankford's approach, as Senator Klobuchar has outlined  
7 here. When you look at the actual numbers, 74 of the 86  
8 nominations were considered post cloture for 8 or fewer  
9 hours. It is a solution in search of a problem when it  
10 comes to 8 hours.

11 But there is a problem in the Senate, and I am putting  
12 my faith in this fellow from Alabama over here, this new  
13 chairman of the Senate Appropriations Committee, Richard  
14 Shelby. He and I and Pat Leahy -- and I believe, Senator  
15 McConnell, you have been in on these conversations with  
16 Senator Schumer -- really want to restore the  
17 appropriations process.

18 Think about it. Twelve appropriation bills coming to  
19 the floor, subject to debate and amendments. It will be  
20 like the Senate of old, and I would say to Senator  
21 Alexander, that is the confidence builder. We have got to  
22 get back to the role where we actually execute on the  
23 floor, where members are engaged in floor debate. I think  
24 that will build up more bipartisanship and camaraderie and  
25 trust. We need to restore the trust in the institution,

1 and I am counting on you, Senator Shelby, and I am going to  
2 try to help you.

3 The Chairman. Well, I would just say that Senator  
4 Shelby has to have time on the floor to do that. But  
5 Senator Shelby, who I couldn't convince to let me be the  
6 chairman of the Appropriations Committee and him stay at  
7 the Rules Committee, if you have any comments you want to  
8 make, we would be glad.

9 Senator Shelby. I am here to support you, Mr.  
10 Chairman. I wish we didn't have to go down this road, and  
11 I think your graph that you handed out here says a lot.  
12 Now I am sure all of you have looked at it.

13 Cloture votes on the executive and judicial nominees.  
14 Under President Carter, 0. Under President Reagan, 0.  
15 Under President George H.W. Bush, 0. Under -- need my  
16 glasses. Under President Clinton, 8. Under President  
17 George W. Bush, 4. Under President Obama, 12. Under  
18 President Trump thus far, second year, 86.

19 This is telling, huh? It means we have got to change  
20 the way we do business. But I wish we didn't have to do  
21 this, and I support the change.

22 The Chairman. Thank you, Chairman.

23 Any other comments? I would just say on the time to  
24 vet, it takes 85 days now to get -- on average to get these  
25 individuals to the floor. I don't recall any vetting

1   happening on the floor that made a difference, but I -- and  
2   also the other thing I would like -- point I would like to  
3   make is that this is not designed in any way to limit  
4   debate. It is designed to free up floor time so we can get  
5   to the appropriations bills and other things.

6           The debate isn't occurring anyway. I just checked the  
7   last few -- the last couple of votes that were clearly  
8   controversial, a circuit judge and an Administrator for  
9   NASA. The nominees were more controversial than the  
10   nominees that got 80 and 90 and 98 votes after a long  
11   period of debate where there is no debate going on.

12           We did confirm our 15th circuit judge last week, 50 to  
13   47. There were 42 minutes of debate from the minority in  
14   the 30 hours that would still be available under the  
15   Lankford rule. There would still be a number of people  
16   that would have 30 hours. But it is not like we are using  
17   30 hours for debate. It is whatever hours we use are not  
18   available for anything else.

19           I think what most people on this committee would like  
20   to get to would be a nomination is reported out of  
21   committee. It comes to the floor. Whatever debate is  
22   necessary to have at that time up until people are worn out  
23   you could have, but then you would have the vote.

24           Last week, we had a NASA Administrator that where the  
25   time for the vote was quite a bit longer than the time for

1 the -- than the time taken for debate. But we had set  
2 aside 30 hours for debate, and that debate was 17 minutes  
3 by the minority. So 17 minutes to insist on the full time  
4 and take the 17 minutes.

5 If you could do other things at the same time, as  
6 Senator King and I have talked about trying to revive that  
7 concept, where we could have other work going on at the  
8 same time. There are things this committee can do, but the  
9 issue for us today is this.

10 There are amendments filed. Senator Klobuchar, go  
11 right ahead.

12 Senator Klobuchar. Mr. Chairman? Yes. I just am  
13 going to follow in Senator Durbin's footsteps here and not  
14 do a one-on-one on facts. Just one thing. By April 12th  
15 of the first Obama presidency, Trump presidency. Obama had  
16 sent to the Senate 734. Donald Trump, 589. So there has  
17 been an issue, which we all acknowledge, of less nominees  
18 coming to us because of slowness in them getting them  
19 forward.

20 But I do want to put on the record just one thing from  
21 Senator Schumer, which is a special report. If I could put  
22 that on the record?

23 The Chairman. Without objection.

24 [The information referred to follows:]

25 [COMMITTEE INSERT]

1           Senator Klobuchar. All right. Very good.

2           And I do take on the suggestions of some of the  
3 members that if there is a way to make this bipartisan, to  
4 have it go out into the future somehow, I think that a  
5 number of us would like to work with you on that.

6           Senator King. Mr. Chairman?

7           The Chairman. Senator King?

8           Senator King. I also want to continue to work on this  
9 issue. I am not in support of this motion, as it currently  
10 stands. But one thought that I perhaps will put forward on  
11 the floor, we can have discussion if the bill -- if this  
12 rule change goes to the floor, is if the cloture vote  
13 achieves 60 votes or more, then the time limits would  
14 collapse to the Langford proposal.

15           In other words, it would alleviate the situation where  
16 you have a cloture vote, and everybody is for the person.  
17 They are going to pass 98 to 2. So why do we have to take  
18 all that time? So that is a suggestion that I have  
19 prepared it in amendment language, but it is one that we  
20 can talk about as this matter proceeds.

21           Another proposal is, as you and I have discussed, of  
22 seeing whether -- and this is I am one of those new people.  
23 Not younger, but new. Why can't we do other things while  
24 we are waiting for the 8 hours or the 30 hours to elapse,  
25 if it is not being used for debate on the nominee?

1           In other words, can we walk and chew gum at the same  
2   time and consider other matters during that period? And  
3   those of you who have been here longer than I have perhaps  
4   know why that is not the case. But as a newcomer, that is  
5   something that has always puzzled me.

6           The Chairman. I think that used to happen with great  
7   frequency, but it requires unanimous consent. And so it  
8   hasn't been allowed for a long time. But for several  
9   years, that was the way the Senate -- the Senate did  
10   function.

11          Now, Senator King, you had an amendment on that first  
12   issue, which you don't intend to offer today? Is that  
13   correct?

14          Senator King. I am not going to offer it today. That  
15   is correct.

16          Thank you.

17          The Chairman. Okay. So I have -- if there are no  
18   further comments, I have two amendments to offer, Blunt  
19   Amendment 1 and Blunt Amendment 2. I ask for unanimous  
20   consent that these amendments be considered en bloc so they  
21   would require one vote.

22          Without objection.

23          [The information referred to follows:]

24          [COMMITTEE INSERT]

25

1           The Chairman. The amendments I propose just ensure  
2   that this resolution, if adopted, is consistent with the  
3   current precedent and remove any future issues of  
4   interpretation should new precedents be set regarding how  
5   you invoke cloture.

6           All the members know a simple majority, which was set  
7   by precedent, is currently required to end debate on  
8   nominations. Should a new precedent be established, the  
9   standing order created by the Lankford resolution will not  
10   conflict with that new precedent, whether it was more or  
11   less, if this change is made.

12          So call for the vote if there are no questions. This  
13   would just clarify that we would be using the new precedent  
14   at any future time if this amendment became -- if this  
15   amendment is approved.

16          Senator Klobuchar. This would keep it at 51. This  
17   would?

18          The Chairman. It would. It would.

19          Senator Klobuchar. Okay. I don't know if you wanted  
20   to add anything on that, or you made your point already of  
21   opposition to that?

22          Okay. Thank you.

23          The Chairman. I think we could probably do this with  
24   a voice vote, if that is acceptable to everybody?

25          All those in favor, say aye.

1 [A chorus of ayes.]

2 The Chairman. All those opposed, no.

3 [A chorus of noes.]

4 The Chairman. In the opinion of the chair, the ayes  
5 have it. The amendment is agreed to.

6 Are there further amendments?

7 Senator Shelby. Mr. Chairman?

8 The Chairman. Yes, sir?

9 Senator Shelby. I think we all know this, and I don't  
10 know if the public knows this, but this deals with post  
11 cloture, after cloture is invoked. Is that correct?

12 The Chairman. That is correct.

13 Senator Shelby. Okay, thank you.

14 The Chairman. And it doesn't deal with the  
15 intervening day, which is another topic.

16 Senator Alexander?

17 Senator Alexander. Mr. Chairman, I appreciate the  
18 tone of Senator Durbin's comments and the other comments of  
19 Amy and the other comments, Senator McConnell's.

20 Let me make a suggestion. I suggested this in our  
21 Republican lunch today is that we have a discussion among  
22 ourselves about what the amendment process actually is when  
23 appropriations bills come to the floor because so many  
24 Senators don't -- haven't seen it before. And that has  
25 really -- that has really been the problem.

1           I mean, we could change all the rules in the book, but  
2   if Alexander objects to the Durbin amendment, then Durbin  
3   objects to the Alexander amendment, then the whole energy  
4   and water bill stops. So we are going to have to have a  
5   consensus within each of our caucuses if Senator Shelby and  
6   Senator Leahy are going to be successful. That if Senator  
7   McConnell moves to bring a bill to the floor, that there is  
8   not an objection to that and he doesn't have to file  
9   cloture on it. If we have to file cloture, that will  
10   delays things.

11           And then if Senator Durbin then moves an amendment  
12   that some of us don't like, we need to vote on it. We need  
13   to agree to a time consent and either table it or vote on  
14   it. And I think that really requires some understanding in  
15   each caucus because I am not sure most Senators know  
16   exactly how that works.

17           Senator McConnell. Would the Senator yield?

18           Senator Alexander. I do.

19           Senator McConnell. Yes. I will give two recent  
20   examples. We went to the floor on immigration, open for  
21   debate. We called up the Crapo banking bill, open for  
22   debate. And what Senator Alexander is talking about is  
23   that members would prevent other members from getting a  
24   vote.

25           There is no way to fix that, I don't think, from a

1 procedural point of view. It is a behavioral issue.

2 I remember, Dick, you saying one time, if you don't  
3 want to vote, don't come to the Senate or some --

4 Senator Durbin. Right.

5 Senator McConnell. Yes. There is nothing wrong with  
6 voting. And we will be going to these appropriation bills.  
7 We had a very constructive meeting in my office yesterday  
8 with Senator Shelby and Senator Leahy and the Minority  
9 Leader and expressed an interest in getting on  
10 appropriations bills without having a motion to proceed and  
11 having open amendments.

12 But as Lamar just pointed -- Senator Alexander just  
13 pointed out, anybody can prevent anybody else from getting  
14 an amendment vote. We need to quit that. That is not a  
15 rules issue. That is a behavioral issue.

16 Thank you, Mr. Chairman.

17 The Chairman. Senator Klobuchar?

18 Senator Klobuchar. And Mr. Leader, just so you know,  
19 that was reported back to us at the ranking members meeting  
20 today in a very positive way from Leader Schumer just about  
21 the meeting and his intention, as Senator Durbin has  
22 explained, to want to go forward with this appropriations  
23 process. And there was pretty, I would say, vast agreement  
24 that it was a good idea.

25 Senator Shelby. Mr. Chairman?

1           The Chairman.   Senator Shelby?

2           Senator Shelby.   I said this yesterday in the meeting,  
3   but I really believe this.   That when the appropriation  
4   process breaks down, the Senate breaks down.   And it  
5   reflects on both of us, Republicans and Democrats, because  
6   the Senate is not working.

7           If we work the appropriation process, we are going to  
8   work the Senate.   I believe this.   I talked to Senator  
9   Durbin about that.   Do you agree, Dick?

10          Senator Durbin.   I would just add, if I might, through  
11   the chair, let us pick an appropriation bill, put some  
12   training wheels on it, and head it to the floor.   Let us  
13   see how this works.

14          I think we have got to educate ourselves, and Senator  
15   McConnell, you are right.   As long as you deal with  
16   unanimous consent, anybody can stop the train.   So I hope  
17   that we can find a way to get back to the old.

18          Senator Shelby.   If somebody comes up, and it could be  
19   one of ours or yours, and comes up and we got a bill that  
20   comes out of the Approps Committee, for example, one or  
21   two, say unanimously.   And they said, well, I am going to  
22   talk, but you didn't talk long, or she doesn't, on a motion  
23   to proceed.   We have got to cut that off together.   That is  
24   what they used to do.

25          I have been there, and you have, too, Senator.   A lot

1 of us have on the committee, when the committee worked.

2 But it only works if we work together.

3 Senator Alexander. Mr. Chairman?

4 The Chairman. Senator Alexander?

5 Senator Alexander. I am violating an unwritten rule  
6 by speaking too many times. But with you and Senator  
7 Klobuchar as chairman and ranking member, I would hope that  
8 this committee would take it upon itself to focus on the  
9 health of the Senate as an institution and lead us in these  
10 discussions.

11 I overheard Justice Thomas talking last summer, and  
12 someone asked him how he and Ruth Bader Ginsburg got along  
13 so well. And he said because we try to remember that the  
14 institution is more important than any of our opinions.  
15 And I think this committee could help Senators remember  
16 that this institution is more important than any of our  
17 opinions or our partisan differences. And it would be  
18 welcomed, I believe, by almost all of us.

19 Senator Klobuchar. Well said. Thanks.

20 The Chairman. I think Senator Klobuchar and I are  
21 both in agreement that we would like for that to be one of  
22 the things we get accomplished here, and we are willing to  
23 spend our time and effort to do that. And I think more and  
24 more, the leaders, the Democratic Whip and the Majority  
25 Leader are hearing that members want to vote. So give us a

1 chance to vote.

2 And one member shouldn't be able to decide -- I don't  
3 mean the leaders. One member complaining and objecting  
4 shouldn't be able to decide that the rest of us don't get  
5 to participate in the process, or three members who don't  
6 want to have an amendment that they are worried about  
7 voting on. I think Senator Durbin's view that if you don't  
8 want to vote, you shouldn't come to the Senate is the  
9 correct view.

10 So if there is no further debate, the question is on  
11 reporting favorably Senate Resolution 355, as amended.

12 All those in favor will vote aye, and opposed vote no.  
13 And we will have a roll call vote on this.

14 The clerk will call the roll.

15 The Clerk. Mr. McConnell?

16 Senator McConnell. Aye.

17 The Clerk. Mr. Alexander?

18 Senator Alexander. Aye.

19 The Clerk. Mr. Roberts?

20 Senator Roberts. Aye.

21 The Clerk. Mr. Shelby?

22 Senator Shelby. Aye.

23 The Clerk. Mr. Cruz?

24 Senator Cruz. Aye.

25 The Clerk. Ms. Capito?

1 Senator Capito. Aye.

2 The Clerk. Mr. Wicker?

3 Senator Wicker. Aye.

4 The Clerk. Ms. Fischer?

5 Senator Fischer. Aye.

6 The Clerk. Ms. Hyde-Smith?

7 Senator Hyde-Smith. Aye.

8 The Clerk. Ms. Klobuchar?

9 Senator Klobuchar. No.

10 The Clerk. Ms. Feinstein?

11 Senator Klobuchar. No, by proxy.

12 The Clerk. Mr. Schumer?

13 Senator Klobuchar. No, by proxy.

14 The Clerk. Mr. Durbin?

15 Senator Durbin. No.

16 The Clerk. Mr. Udall?

17 Senator Klobuchar. No, by proxy.

18 The Clerk. Mr. Warner?

19 Senator Klobuchar. No, by proxy.

20 The Clerk. Mr. Leahy?

21 Senator Klobuchar. No, by proxy.

22 The Clerk. Mr. King?

23 Senator King. No.

24 The Clerk. Ms. Cortez?

25 Senator Cortez Masto. No.

1           The Clerk.   Chairman Blunt?

2           The Chairman.   Votes yes.

3           The Clerk.   Ten ayes.

4           The Chairman.   The ayes are 10.   The nays are 9.

5   Resolution 355, as amended, is reported favorably.

6           I ask unanimous consent that in preparing the measure  
7   for reporting, the staff is authorized to make any required  
8   technical and conforming changes.

9           Like we have told our leaders today, we want to vote.  
10   Now we can -- I would like to get the nomination process  
11   working better so we could get the other things we are  
12   supposed to do to have the time to do those.

13          But I am -- like I said, I am pleased to be able to  
14   chair this committee again.   I am pleased to serve on the  
15   Appropriations Committee with our new chairman, Senator  
16   Shelby.   I think Senator Klobuchar and I are going to do  
17   our best to bring the institution of the Senate to what it  
18   should be, can be, and hopefully, will be.

19          Senator Klobuchar?

20          Senator Klobuchar.   It is a big job, but I think we  
21   are up for it.

22          The Chairman.   The committee stands adjourned.

23          [Whereupon, at 4:13 p.m., the hearing was adjourned.]

24

25

| <b><u>WORD INDEX</u></b>              |                         |                                       |  |                             |
|---------------------------------------|-------------------------|---------------------------------------|--|-----------------------------|
| < \$ >                                | <b>3</b> 12:8           | <b>acknowledge</b>                    | 23:1 24:6 26:11                            | <b>Barack</b> 16:8          |
| <b>\$380</b> 5:23                     | <b>3,000</b> 12:15      | 20:17                                 | <b>America</b> 12:24                       | <b>Barrasso</b> 12:8        |
| < ' >                                 | <b>3:34</b> 1:10        | <b>actual</b> 17:7                    | <b>American</b> 8:21                       | <b>basic</b> 8:17           |
| '12 11:23 15:12                       | <b>30</b> 3:14 6:19     | <b>add</b> 23:20 27:10                | <b>Amy</b> 11:6 24:19                      | <b>behavioral</b> 26:1, 15  |
| '13 11:23 15:12                       | 8:5 19:14, 16, 17       | <b>address</b> 8:10                   | <b>answer</b> 8:17                         |                             |
| < " >                                 | 20:2 21:24              | <b>addressed</b> 3:20                 | <b>anybody</b> 13:1                        | <b>belief</b> 17:1          |
| "innocent 12:1                        | <b>355</b> 2:22 29:11   | <b>adequately</b> 9:3                 | 26:13, 13 27:16                            | <b>believe</b> 8:25         |
| "M 5:13                               | 31:5                    | <b>adjourned</b> 31:22, 23            | <b>anyway</b> 12:21                        | 16:24 17:14                 |
| "nuclear 9:25                         | < 4 >                   | <b>Administration</b>                 | 19:6                                       | 27:3, 8 28:18               |
| "Senate 7:14                          | <b>4</b> 18:17          | 1:7 2:3 7:6                           | <b>appeal</b> 14:22                        | <b>believes</b> 13:2        |
| "Well 11:19                           | <b>4:13</b> 31:23       | 8:20, 23 9:2                          | <b>appears</b> 17:4                        | <b>best</b> 31:17           |
| < 0 >                                 | <b>42</b> 19:13         | 13:18                                 | <b>appellate</b> 7:22                      | <b>better</b> 4:15          |
| <b>0</b> 18:14, 14, 15                | <b>44</b> 8:1           | <b>administrative</b>                 | <b>appoint</b> 3:23                        | 31:11                       |
| < 1 >                                 | <b>47</b> 19:13         | 4:16                                  | <b>appointees</b> 12:2                     | <b>beyond</b> 17:1, 4       |
| <b>1</b> 10:22 22:19                  | < 5 >                   | <b>Administrator</b>                  | <b>appointment</b>                         | <b>big</b> 31:20            |
| <b>10</b> 31:4                        | <b>50</b> 19:12         | 19:8, 24                              | 10:9                                       | <b>bill</b> 6:3 21:11       |
| <b>100</b> 6:18                       | <b>51</b> 13:24 23:16   | <b>adopt</b> 14:12                    | <b>appointments</b>                        | 25:4, 7, 21 27:11, 19       |
| <b>113th</b> 3:5                      | <b>589</b> 20:16        | <b>adopted</b> 3:7                    | 7:16 10:13                                 | <b>bills</b> 17:18 19:5     |
| <b>115th</b> 8:7, 13                  | < 6 >                   | 14:12 23:2                            | <b>appreciate</b> 3:2                      | 24:23 26:6, 10              |
| <b>12</b> 7:20 18:17                  | <b>6</b> 10:5           | <b>adoption</b> 5:11                  | 24:17                                      | <b>bipartisan</b> 8:10      |
| <b>12th</b> 20:14                     | <b>60</b> 21:13         | <b>advanced</b> 8:1                   | <b>approach</b> 14:11                      | 11:22 12:6 21:3             |
| <b>13</b> 7:19                        | <b>60-vote</b> 7:3      | <b>advancing</b> 7:13                 | 17:6                                       | <b>bipartisanship</b>       |
| <b>14</b> 13:8                        | < 7 >                   | <b>afraid</b> 13:11                   | <b>appropriation</b>                       | 17:24                       |
| <b>15th</b> 19:12                     | <b>734</b> 20:16        | <b>afternoon</b> 2:21                 | 17:18 26:6 27:3, 7, 11                     | <b>bit</b> 19:25            |
| <b>16</b> 3:5 6:22                    | <b>74</b> 8:8 17:7      | <b>agencies</b> 4:3, 4                | <b>Appropriations</b>                      | <b>bloc</b> 22:20           |
| <b>163</b> 12:11                      | <b>78</b> 3:5 6:22      | 13:1                                  | 5:5 13:7 17:13, 17 18:6 19:5               | <b>blue</b> 7:4             |
| <b>17</b> 12:14 20:2, 3, 4            | < 8 >                   | <b>agree</b> 3:22 5:14, 20 25:13 27:9 | <b>Approvals</b> 27:20                     | <b>Blunt</b> 1:12, 13       |
| <b>19</b> 3:4 7:18                    | <b>8</b> 3:13 8:8       | <b>agreed</b> 24:5                    | <b>approved</b> 23:15                      | 2:1 5:3, 6:23               |
| <b>1986</b> 6:17                      | 12:17 17:8, 10          | <b>agreement</b> 26:23                | <b>April</b> 1:4 20:14                     | 22:18, 19 31:1              |
| < 2 >                                 | 18:16 21:24             | 28:21                                 | <b>aren't</b> 4:3                          | <b>body</b> 6:13            |
| <b>2</b> 7:9 8:7 12:16, 18 16:8 21:17 | <b>80</b> 19:10         | <b>agrees</b> 14:18                   | <b>Army</b> 15:23                          | <b>book</b> 25:1            |
| 22:19                                 | <b>85</b> 18:24         | <b>ahead</b> 20:11                    | <b>aside</b> 20:2                          | <b>breaks</b> 27:4, 4       |
| <b>20</b> 4:6 8:7                     | <b>86</b> 8:5 17:7      | <b>Alabama</b> 17:12                  | <b>asked</b> 9:10                          | <b>bring</b> 16:10          |
| <b>2003</b> 13:15                     | 18:18                   | <b>Alexander</b> 1:14                 | 28:12                                      | 25:7 31:17                  |
| <b>2010</b> 6:4                       | <b>8-hour</b> 3:16      | 9:11, 16, 18                          | <b>asks</b> 6:19                           | <b>brought</b> 11:9         |
| <b>2011</b> 11:23                     | < 9 >                   | 10:24, 25 11:2                        | <b>authorized</b> 31:7                     | 13:14 16:4                  |
| 13:15 15:12                           | <b>9</b> 31:4           | 15:18 16:3, 5                         | <b>available</b> 19:14, 18                 | <b>budget</b> 5:23          |
| <b>2013</b> 3:15 6:24, 25 7:12 8:10   | <b>90</b> 4:8 19:10     | 17:21 24:16, 17                       | <b>avoid</b> 14:13                         | <b>build</b> 17:24          |
| 9:21 13:16                            | <b>97</b> 10:22         | 25:2, 3, 18, 22                       | <b>aye</b> 23:25 29:12, 16, 18, 20, 22, 24 | <b>builder</b> 17:21        |
| <b>2014</b> 3:15                      | <b>98</b> 19:10 21:17   | 26:12 28:3, 4, 5                      | 30:1, 3, 5, 7                              | <b>building</b> 1:11        |
| <b>2017</b> 2:24 3:4                  | < A >                   | 29:17, 18                             | <b>ayes</b> 24:1, 4                        | <b>Bush</b> 18:15, 17       |
| 13:16                                 | <b>ability</b> 15:6     | <b>alleviate</b> 21:15                | 31:3, 4                                    | <b>business</b> 18:20       |
| <b>2018</b> 1:4                       | <b>able</b> 2:12 3:23   | <b>allow</b> 3:7                      | < B >                                      | < C >                       |
| <b>22</b> 7:8                         | 13:10 29:2, 4           | 14 22:8                               | <b>baby</b> 5:15                           | <b>call</b> 23:12 29:13, 14 |
| <b>23</b> 8:3                         | 31:13                   | <b>allowed</b> 3:10, 11, 14 22:8      | <b>back</b> 5:3 6:17                       | <b>called</b> 25:21         |
| <b>25</b> 1:4 8:19                    | <b>Abraham</b> 15:22    | <b>amended</b> 29:11                  | 8:10 12:23 14:9                            | <b>camaraderie</b>          |
| <b>272</b> 12:12                      | <b>abuses</b> 13:12     | 31:5                                  | 15:11 16:9                                 | 17:24                       |
| <b>2-year</b> 9:21 10:2               | <b>acceptable</b> 23:24 | <b>amendment</b>                      | 17:22 26:19                                | <b>can't</b> 13:23          |
| < 3 >                                 | <b>accidental</b> 14:19 | 16:25 21:19                           | 27:17                                      | 14:23 21:23                 |
|                                       | <b>accommodate</b>      | 22:11, 19, 19                         | <b>bad</b> 9:3 11:20                       | <b>Capito</b> 1:14 6:8      |
|                                       | 5:18                    | 23:14, 15 24:5, 22 25:2, 3, 11        | <b>Bader</b> 28:12                         | 29:25 30:1                  |
|                                       | <b>accomplished</b>     | 26:14 29:6                            | <b>banking</b> 25:21                       | <b>care</b> 3:21            |
|                                       | 28:22                   | <b>amendments</b>                     |  | <b>careful</b> 6:13         |
|                                       | <b>achieves</b> 21:13   | 16:16 17:19                           |  | <b>carry</b> 3:23           |
|                                       |                         | 20:10 22:18, 20                       |  | <b>Carter</b> 18:14         |
|                                       |                         |                                       |  | <b>case</b> 22:4            |
|                                       |                         |                                       |  | <b>cases</b> 8:25           |
|                                       |                         |                                       |  | <b>cast</b> 14:5            |

|   |   |  |  |  |
|---|---|--|--|--|
| <p><b>caucus</b> 15:25<br/>25:15<br/><b>caucuses</b> 25:5<br/><b>caused</b> 14:8<br/><b>certain</b> 9:2<br/><b>certainly</b> 9:9<br/><b>chair</b> 2:6, 12<br/>5:3, 5 24:4<br/>27:11 31:14<br/><b>chairman</b> 1:12<br/>2:2 5:2, 8 9:6, 7,<br/>17, 20 10:23, 25<br/>11:5 15:17, 18,<br/>20 17:13 18:3, 6,<br/>10, 22, 22 20:12,<br/>23 21:6, 7 22:6,<br/>17 23:1, 18, 23<br/>24:2, 4, 7, 8, 12,<br/>14, 17 26:16, 17,<br/>25 27:1 28:3, 4,<br/>7, 20 31:1, 2, 4,<br/>15, 22<br/><b>chairmanship</b><br/>2:7<br/><b>chairs</b> 11:2<br/><b>chamber</b> 16:1<br/><b>chance</b> 2:5 29:1<br/><b>change</b> 5:18<br/>6:12, 16, 20, 23<br/>8:11 9:4 13:24<br/>14:13 18:19, 21<br/>21:12 23:11<br/>25:1<br/><b>changes</b> 31:8<br/><b>checked</b> 19:6<br/><b>chew</b> 22:1<br/><b>chorus</b> 24:1, 3<br/><b>circuit</b> 7:16, 21<br/>10:6 13:14 19:8,<br/>12<br/><b>circumstances</b><br/>6:25<br/><b>citizens</b> 4:2<br/><b>Civil</b> 15:24<br/><b>clarify</b> 23:13<br/><b>clearly</b> 19:7<br/><b>clerk</b> 29:14, 15,<br/>17, 19, 21, 23, 25<br/>30:2, 4, 6, 8, 10,<br/>12, 14, 16, 18, 20,<br/>22, 24 31:1, 3<br/><b>Clinton</b> 18:16<br/><b>closing</b> 7:15<br/><b>cloture</b> 4:7 6:15<br/>8:6, 8, 9 10:14,<br/>21 11:15 17:8<br/>18:13 21:12, 16<br/>23:5 24:11, 11<br/>25:9, 9<br/><b>Cochran</b> 2:17</p> | <p><b>collapse</b> 21:14<br/><b>colleague</b> 2:18<br/><b>colleagues</b> 2:4<br/>14:22<br/><b>come</b> 2:3 5:13<br/>13:10 16:9, 24<br/>24:23 26:3 29:8<br/><b>comes</b> 17:10<br/>19:21 27:18, 19,<br/>20<br/><b>coming</b> 15:5<br/>17:18 20:18<br/><b>comments</b> 4:18<br/>9:13, 15 18:7, 23<br/>22:18 24:18, 18,<br/>19<br/><b>Commerce</b> 5:9<br/><b>Committee</b> 1:7,<br/>10, 12 2:2, 6, 7,<br/>12, 15, 16, 18, 19<br/>3:3 4:14, 14 5:3,<br/>9 6:7 7:24 8:1,<br/>12 9:8 13:7, 9<br/>17:13 18:6, 7<br/>19:19, 21 20:8,<br/>25 22:24 27:20<br/>28:1, 1, 8, 15<br/>31:14, 15, 22<br/><b>compared</b> 7:8, 19<br/><b>complaining</b> 29:3<br/><b>completely</b> 17:4<br/><b>concept</b> 20:7<br/><b>confidence</b> 17:21<br/><b>confirm</b> 11:13,<br/>16 19:12<br/><b>confirmation</b><br/>4:11<br/><b>confirmed</b> 6:22<br/>7:9, 18, 20, 21<br/>12:12<br/><b>confirming</b> 12:2<br/><b>conflict</b> 23:10<br/><b>conforming</b> 31:8<br/><b>congratulate</b> 5:4<br/><b>Congress</b> 3:6<br/>4:6 6:3 7:10<br/>8:7, 13<br/><b>consensus</b> 25:5<br/><b>consensus-buildin</b><br/><b>g</b> 14:16 15:1, 3,<br/>14<br/><b>consent</b> 22:7, 20<br/>25:13 27:16<br/>31:6<br/><b>consider</b> 8:14<br/>13:6 15:25 22:2<br/><b>CONSIDERATIO</b><br/><b>N</b> 1:1 2:23<br/>3:19 6:13<br/><b>considered</b> 9:3</p> | <p>17:3, 8 22:20<br/><b>considering</b> 6:19<br/><b>consistent</b> 23:2<br/><b>constructive</b><br/>10:20 11:8 26:7<br/><b>contacted</b> 15:22<br/><b>context</b> 9:23<br/>10:10<br/><b>continue</b> 21:8<br/><b>continuing</b> 2:10<br/><b>contrast</b> 7:12<br/><b>control</b> 4:2<br/><b>controversial</b><br/>19:8, 9<br/><b>conversations</b><br/>17:15<br/><b>convince</b> 18:5<br/><b>correct</b> 16:5<br/>22:13, 15 24:11,<br/>12 29:9<br/><b>Cortez</b> 1:15 6:7<br/>30:24, 25<br/><b>couldn't</b> 18:5<br/><b>counsels</b> 11:24<br/><b>counting</b> 18:1<br/><b>country</b> 14:16<br/>15:2<br/><b>couple</b> 19:7<br/><b>course</b> 2:17<br/><b>court</b> 7:16, 21<br/>8:17 10:9<br/><b>courts</b> 7:22<br/><b>Crapo</b> 25:21<br/><b>created</b> 23:9<br/><b>critical</b> 8:13<br/><b>Cruz</b> 1:14<br/>29:23, 24<br/><b>current</b> 4:6<br/>6:18 16:10 23:3<br/><b>currently</b> 21:9<br/>23:7<br/><b>cut</b> 11:12, 16<br/>27:23<br/><br/>&lt; D &gt;<br/><b>D.C</b> 1:8 10:6<br/><b>day</b> 11:17 16:12<br/>17:1 24:15<br/><b>days</b> 18:24<br/><b>deal</b> 24:14 27:15<br/><b>deals</b> 24:10<br/><b>debate</b> 3:9, 14,<br/>16 4:10, 12 6:13,<br/>17, 18, 24 8:5<br/>11:13, 16 12:17,<br/>18 16:16, 22<br/>17:19, 23 19:4, 6,<br/>11, 11, 13, 17, 21<br/>20:1, 2, 2 21:25<br/>23:7 25:21, 22<br/>29:10</p> | <p><b>December</b> 2:24<br/>3:4<br/><b>decide</b> 29:2, 4<br/><b>decided</b> 3:9<br/><b>delay</b> 4:10<br/><b>delays</b> 3:24<br/>25:10<br/><b>deliberative</b> 6:12<br/>16:22<br/><b>democracy</b> 15:4<br/><b>Democrat</b> 3:1<br/>11:24 12:3, 25<br/><b>Democratic</b> 12:4<br/>13:19 14:4, 22<br/>28:24<br/><b>Democrats</b> 13:3,<br/>14, 15, 17 27:5<br/><b>Department</b> 13:8<br/><b>Derek</b> 11:11<br/><b>deserve</b> 8:21<br/><b>deserves</b> 12:25<br/><b>designed</b> 6:13<br/>19:3, 4<br/><b>desire</b> 10:6<br/><b>destruction</b><br/>14:15, 25 15:13<br/><b>Dick</b> 26:2 27:9<br/><b>didn't</b> 10:5<br/>12:20 16:20<br/>18:10, 20 27:22<br/><b>difference</b> 19:1<br/><b>differences</b> 28:17<br/><b>different</b> 7:1<br/><b>difficulty</b> 12:1<br/><b>direction</b> 14:10,<br/>21<br/><b>discourage</b> 9:24<br/><b>discussed</b> 21:21<br/><b>discussion</b> 3:18<br/>4:12 8:23 9:19<br/>21:11 24:21<br/><b>discussions</b> 28:10<br/><b>District</b> 3:15<br/>8:16 11:15<br/>12:17<br/><b>doesn't</b> 12:24<br/>13:20 24:14<br/>25:8 27:22<br/><b>doing</b> 11:9, 10,<br/>19<br/><b>don't</b> 5:20 9:9<br/>12:11 15:6, 16,<br/>16 16:18 17:5<br/>18:25 22:12<br/>23:19 24:9, 24<br/>25:12, 25 26:2, 3<br/>29:2, 4, 5, 7<br/><b>Donald</b> 20:16<br/><b>Durbin</b> 1:15<br/>9:11, 16 11:1, 6<br/>12:7 15:19, 20</p> | <p>25:2, 2, 11 26:4,<br/>21 27:9, 10<br/>30:14, 15<br/><b>Durbin's</b> 20:13<br/>24:18 29:7<br/><br/>&lt; E &gt;<br/><b>ears</b> 15:5<br/><b>educate</b> 27:14<br/><b>effort</b> 28:23<br/><b>either</b> 25:13<br/><b>elapse</b> 21:24<br/><b>elected</b> 4:1<br/><b>election</b> 5:22<br/>16:20<br/><b>eliminated</b> 12:11,<br/>14, 15<br/><b>en</b> 22:20<br/><b>energy</b> 25:3<br/><b>engaged</b> 17:23<br/><b>enjoyed</b> 5:5<br/><b>ensure</b> 23:1<br/><b>episode</b> 10:10<br/><b>essentially</b> 10:3<br/><b>established</b> 7:23<br/>23:8<br/><b>ethics</b> 6:2<br/><b>events</b> 16:1<br/><b>eventually</b> 4:7<br/><b>everybody</b> 13:2<br/>14:18 21:16<br/>23:24<br/><b>exactly</b> 14:17<br/>25:16<br/><b>example</b> 5:16<br/>8:16 27:20<br/><b>examples</b> 25:20<br/><b>Excessive</b> 3:24<br/><b>exciting</b> 16:17<br/><b>execute</b> 17:22<br/><b>executive</b> 3:12<br/>18:13<br/><b>existed</b> 11:23<br/><b>explain</b> 16:14, 23<br/><b>explained</b> 26:22<br/><b>expressed</b> 26:9<br/><br/>&lt; F &gt;<br/><b>fact</b> 7:14<br/><b>facts</b> 20:14<br/><b>failing</b> 6:21<br/><b>faith</b> 17:12<br/><b>far</b> 18:18<br/><b>favor</b> 23:25<br/>29:12<br/><b>favorably</b> 29:11<br/>31:5<br/><b>Federal</b> 7:22<br/><b>feel</b> 6:10 13:4<br/><b>Feinstein</b> 30:10</p> |
|---|---|--|--|--|

|  |  |   |   |  |
|--|--|---|---|--|
| <b>fellow</b> 17:12<br><b>fewer</b> 8:8 17:8<br><b>fewest</b> 7:10<br><b>file</b> 10:14 25:8, 9<br><b>filed</b> 4:7 20:10<br><b>fill</b> 13:18<br><b>filling</b> 16:6<br><b>finally</b> 10:15<br><b>find</b> 15:13 27:17<br><b>First</b> 3:22 6:1<br>7:2, 16, 18, 21<br>8:3 13:14 20:15<br>22:11<br><b>Fischer</b> 1:15<br>30:4, 5<br><b>fix</b> 25:25<br><b>floor</b> 3:18 4:5<br>8:2 13:10 16:3,<br>16, 25 17:19, 23,<br>23 18:4, 25 19:1,<br>4, 21 21:11, 12<br>24:23 25:7, 20<br>27:12<br><b>focus</b> 28:8<br><b>follow</b> 2:15<br>20:13<br><b>following</b> 6:21<br><b>follows</b> 20:24<br>22:23<br><b>footsteps</b> 2:15<br>20:13<br><b>former</b> 11:23<br><b>forth</b> 8:24<br><b>fortunate</b> 2:8<br><b>forward</b> 2:10<br>3:17 20:19<br>21:10 26:22<br><b>found</b> 5:14<br><b>fractured</b> 15:4<br><b>frankly</b> 3:25<br><b>free</b> 16:3 19:4<br><b>frequency</b> 22:7<br><b>full</b> 20:3<br><b>fully</b> 10:9<br><b>function</b> 22:10<br><b>functions</b> 4:15<br><b>funding</b> 5:22<br><b>further</b> 22:18<br>24:6 29:10<br><b>future</b> 4:13<br>21:4 23:3, 14<br><br><b>&lt; G &gt;</b><br><b>Garland</b> 16:10<br><b>General</b> 15:22<br><b>George</b> 18:15, 17<br><b>Georgia</b> 11:15<br><b>getting</b> 5:21<br>20:18 25:23<br>26:9, 13<br><b>Ginsburg</b> 28:12 | <b>give</b> 11:3 25:19<br>28:25<br><b>glad</b> 2:6, 20 18:8<br><b>glasses</b> 18:16<br><b>glimmer</b> 17:5<br><b>go</b> 3:16 9:16<br>10:2 15:11<br>16:11 18:10<br>20:10 21:4<br>26:22<br><b>goes</b> 21:12<br><b>going</b> 10:17<br>13:24, 25 14:20,<br>20 15:23 16:22<br>18:1 19:11 20:7,<br>13 21:17 22:14<br>25:4, 6 26:6<br>27:7, 21 31:16<br><b>good</b> 5:12 12:21<br>21:1 26:24<br><b>Government</b> 4:2<br><b>gradually</b> 13:25<br><b>graph</b> 18:11<br><b>Grassley</b> 12:15<br><b>great</b> 22:6<br><b>greatest</b> 6:12<br><b>gridlock</b> 7:7<br><b>grievance</b> 16:9<br><b>group</b> 11:23<br>12:6<br><b>gum</b> 22:1<br><br><b>&lt; H &gt;</b><br><b>H.W</b> 18:15<br><b>handed</b> 18:11<br><b>happen</b> 13:19,<br>25 17:1 22:6<br><b>happening</b> 19:1<br><b>happens</b> 11:10<br>13:12, 22, 22<br><b>harassment</b> 6:8<br><b>hard</b> 16:14<br><b>harder</b> 3:25<br>15:11<br><b>Harry</b> 7:10<br><b>hasn't</b> 22:8<br><b>haven't</b> 13:10<br>24:24<br><b>head</b> 14:9 27:12<br><b>health</b> 28:9<br><b>hearing</b> 3:3<br>13:8 28:25<br>31:23<br><b>held</b> 3:3<br><b>help</b> 18:2 28:15<br><b>highlighted</b> 7:14<br><b>historic</b> 7:7<br><b>history</b> 2:19<br>6:15 9:5 15:21<br><b>holds</b> 6:5 12:14<br><b>Hon</b> 1:11 | <b>hope</b> 15:11 17:5<br>27:16 28:7<br><b>hopefully</b> 31:18<br><b>hours</b> 3:13, 15<br>6:18, 19 8:5, 7, 8<br>12:17, 18 17:9,<br>10 19:14, 16, 17,<br>17 20:2 21:24,<br>24<br><b>House</b> 11:24<br><b>huge</b> 4:10<br><b>huh</b> 18:19<br><b>hurry</b> 16:6<br><b>Hyde-Smith</b><br>1:15 2:14 5:7<br>30:6, 7<br><br><b>&lt; I &gt;</b><br><b>idea</b> 26:24<br><b>immigration</b><br>25:20<br><b>important</b> 4:12<br>6:24 7:2 12:10<br>28:14, 16<br><b>impossible</b> 13:17<br><b>improve</b> 12:9<br><b>IMPROVING</b><br>1:1 2:22<br><b>impulses</b> 15:5<br><b>including</b> 6:7<br><b>individuals</b> 18:25<br><b>information</b><br>20:24 22:23<br><b>INSERT</b> 20:25<br>22:24<br><b>insist</b> 20:3<br><b>institution</b> 12:22<br>14:1, 16 15:1, 3,<br>14 17:25 28:9,<br>14, 16 31:17<br><b>intend</b> 22:12<br><b>intention</b> 26:21<br><b>interest</b> 26:9<br><b>Internet</b> 15:4<br><b>interpretation</b><br>23:4<br><b>intervening</b><br>24:15<br><b>introduced</b> 2:24<br><b>invoke</b> 23:5<br><b>invoked</b> 8:6<br>24:11<br><b>isn't</b> 19:6<br><b>issue</b> 6:17 8:10<br>10:2, 22 20:9, 17<br>21:9 22:12 26:1,<br>15, 15<br><b>issues</b> 3:21 5:10<br>9:1 23:3<br><b>its</b> 13:8 | <b>&lt; J &gt;</b><br><b>job</b> 31:20<br><b>join</b> 2:20<br><b>judge</b> 8:17<br>11:15 19:8, 12<br><b>judges</b> 3:15<br>7:19, 20, 21 8:21,<br>22, 23 9:2 12:18<br>13:14<br><b>judicial</b> 3:12<br>7:4, 8, 8, 13 8:1<br>16:8 18:13<br><b>Judiciary</b> 7:24<br>8:1<br><b>Justice</b> 13:8<br>28:11<br><br><b>&lt; K &gt;</b><br><b>Kan</b> 11:11<br><b>keep</b> 23:16<br><b>Kennedy</b> 8:18<br><b>kept</b> 14:20<br><b>kill</b> 16:19<br><b>kind</b> 14:17<br><b>King</b> 1:15 20:6<br>21:6, 7, 8 22:11,<br>14 30:22, 23<br><b>Klobuchar</b> 1:15<br>2:8 4:13, 17 5:1,<br>2 9:7 17:6<br>20:10, 12 21:1<br>23:16, 19 26:17,<br>18 28:7, 19, 20<br>30:8, 9, 11, 13, 17,<br>19, 21 31:16, 19,<br>20<br><b>know</b> 5:19<br>10:17, 19 13:12,<br>22 15:16 16:7<br>22:4 23:6, 19<br>24:9, 10 25:15<br>26:18<br><b>knows</b> 13:3<br>24:10<br><br><b>&lt; L &gt;</b><br><b>Lamar</b> 16:5<br>26:12<br><b>Langford</b> 14:23<br>15:15 21:14<br><b>language</b> 21:19<br><b>Lankford</b> 2:24<br>3:6 6:21 10:3<br>14:10 19:15<br>23:9<br><b>Lankford's</b> 3:20<br>5:19 17:6<br><b>laws</b> 6:14<br><b>lead</b> 13:11 28:9 | <b>Leader</b> 5:24<br>7:14 9:14, 24<br>10:7 26:9, 18, 20<br>28:25<br><b>leaders</b> 4:3, 4<br>6:5 28:24 29:3<br>31:9<br><b>leading</b> 9:21<br><b>leads</b> 4:14<br><b>lead-up</b> 14:18<br><b>Leahy</b> 17:14<br>25:6 26:8 30:20<br><b>leasing</b> 15:25<br><b>left</b> 13:7<br><b>legal</b> 8:17<br><b>legislation</b> 6:7<br><b>Levin</b> 12:8 14:2<br><b>limit</b> 19:3<br><b>limits</b> 21:13<br><b>Lincoln</b> 15:22<br><b>lines</b> 15:7<br><b>list</b> 10:12<br><b>little</b> 10:15<br><b>long</b> 2:18 10:12<br>13:5 16:23<br>19:10 22:8<br>27:15, 22<br><b>longer</b> 19:25<br>22:3<br><b>look</b> 2:10 3:17<br>9:1 11:3, 18<br>14:22 17:7<br><b>looked</b> 18:12<br><b>lot</b> 2:9 13:6<br>16:2 18:11<br>27:25<br><b>lots</b> 2:15<br><b>Lott</b> 2:17<br><b>Louisiana</b> 8:18<br><b>lowered</b> 10:8<br><b>lunch</b> 24:21<br><br><b>&lt; M &gt;</b><br><b>main</b> 3:20<br><b>major</b> 6:1<br><b>majority</b> 3:9<br>5:24 9:14, 24<br>10:7, 19 12:4<br>14:1 23:6 28:24<br><b>making</b> 13:17<br><b>manner</b> 3:8<br><b>mark</b> 2:21<br><b>MARKUP</b> 1:1<br><b>Masto</b> 1:16 6:7<br>30:25<br><b>matter</b> 16:10<br>21:20<br><b>matters</b> 22:2<br><b>Matthew</b> 8:16<br><b>McCain</b> 12:7<br><b>McClellan</b> 15:22 |
|--|--|---|---|--|

|  |   |  |  |   |
|--|---|--|--|---|
| <p><b>McConnell</b> 1:14<br/>5:16 7:14 9:15,<br/>17, 21 11:5<br/>12:20 17:15<br/>25:7, 17, 19 26:5<br/>27:15 29:15, 16<br/><b>McConnell's</b><br/>24:19<br/><b>mean</b> 13:14<br/>25:1 29:3<br/><b>means</b> 18:19<br/><b>measure</b> 31:6<br/><b>meet</b> 2:21<br/><b>meeting</b> 15:10<br/>26:7, 19, 21 27:2<br/><b>member</b> 2:9, 13,<br/>25 7:24 16:14<br/>28:7 29:2, 3<br/><b>members</b> 6:6<br/>9:8, 9 12:17<br/>14:4 16:23<br/>17:23 21:3 23:6<br/>25:23, 23 26:19<br/>28:25 29:5<br/><b>Merrick</b> 16:10<br/><b>met</b> 1:10<br/><b>middle</b> 9:18<br/><b>million</b> 5:23<br/><b>Minnesota</b> 8:22<br/><b>Minnesotans</b><br/>5:12<br/><b>minority</b> 19:13<br/>20:3 26:8<br/><b>minutes</b> 19:13<br/>20:2, 3, 4<br/><b>Mississippi</b> 2:19<br/>5:13<br/><b>Mississippians</b><br/>2:16<br/><b>Missouri</b> 7:11<br/><b>Missourians</b> 5:12<br/><b>moment</b> 5:15, 21<br/>6:11 15:21<br/><b>Monday</b> 11:13<br/><b>months</b> 10:5<br/><b>morning</b> 9:8<br/>15:9<br/><b>mother</b> 5:18<br/><b>motion</b> 21:9<br/>26:10 27:22<br/><b>move</b> 12:13<br/>13:25<br/><b>moves</b> 25:7, 11</p> <p>&lt; N &gt;<br/><b>NASA</b> 19:9, 24<br/><b>nays</b> 31:4<br/><b>necessary</b> 19:22<br/><b>need</b> 9:1 17:25<br/>18:15 25:12, 12</p> | <p>26:14<br/><b>needed</b> 15:2<br/><b>negotiations</b> 9:12<br/><b>never</b> 14:5<br/><b>new</b> 5:4, 18<br/>17:12 21:22, 23<br/>23:4, 8, 10, 13<br/>31:15<br/><b>newcomer</b> 22:4<br/><b>newer</b> 16:14<br/><b>newly</b> 4:1<br/><b>nice</b> 5:15<br/><b>noes</b> 24:3<br/><b>nominate</b> 11:11<br/><b>nominated"</b> 12:1<br/><b>nominating</b> 12:1,<br/>10<br/><b>nomination</b> 6:14<br/>19:20 31:10<br/><b>NOMINATIONS</b><br/>1:2 2:23 4:6, 7,<br/>9 7:3, 4, 8 8:6, 7,<br/>8 17:8 23:8<br/><b>nominee</b> 8:16<br/>21:25<br/><b>nominees</b> 3:8, 13,<br/>13 6:22 7:6, 9,<br/>13, 25 8:2, 3, 15,<br/>19 9:2 13:6, 9<br/>16:8 18:13 19:9,<br/>10 20:17<br/><b>noncontroversial</b><br/>12:15<br/><b>normal</b> 17:3<br/><b>noted</b> 5:8 6:21,<br/>23 16:3<br/><b>notes</b> 13:13, 20<br/><b>notice</b> 1:10<br/><b>nuclear</b> 10:7<br/>13:16 14:6, 13,<br/>14, 14<br/><b>number</b> 9:25<br/>14:4 19:15 21:5<br/><b>numbers</b> 17:7</p> <p>&lt; O &gt;<br/><b>Obama</b> 7:19<br/>12:3 16:9 18:17<br/>20:15, 15<br/><b>Obama's</b> 7:9<br/>8:3<br/><b>objecting</b> 29:3<br/><b>objection</b> 20:23<br/>22:22 25:8<br/><b>objects</b> 25:2, 3<br/><b>Obviously</b> 10:5<br/>11:18<br/><b>occasions</b> 10:1<br/><b>occurred</b> 6:3<br/><b>occurrence</b> 16:17<br/><b>occurring</b> 19:6</p> | <p><b>offer</b> 16:25<br/>22:12, 14, 18<br/><b>Office</b> 1:11<br/>7:10 8:3 26:7<br/><b>office."</b> 7:17<br/><b>officials</b> 3:23<br/><b>Okay</b> 9:20<br/>22:17 23:19, 22<br/>24:13<br/><b>old</b> 17:20 27:17<br/><b>Once</b> 3:9 6:15<br/>14:12<br/><b>one-on-one</b> 20:14<br/><b>open</b> 25:20, 21<br/>26:11<br/><b>OPENING</b> 2:1<br/><b>opinion</b> 24:4<br/><b>opinions</b> 28:14,<br/>17<br/><b>opposed</b> 24:2<br/>29:12<br/><b>opposition</b> 10:16<br/>23:21<br/><b>option</b> 10:8<br/>13:16 14:6, 14,<br/>14, 14<br/><b>option,"</b> 9:25<br/><b>order</b> 2:3 9:22<br/>10:1, 3 23:9<br/><b>outcome</b> 10:17,<br/>19<br/><b>outlined</b> 17:6<br/><b>overheard</b> 28:11<br/><b>overwhelming</b><br/>10:2</p> <p>&lt; P &gt;<br/><b>p.m</b> 1:10 31:23<br/><b>pace</b> 7:25<br/><b>participate</b> 29:5<br/><b>particularly</b> 2:8<br/>4:1<br/><b>partisan</b> 11:8<br/>15:4 28:17<br/><b>parts</b> 4:16, 16<br/><b>party</b> 3:21 10:7<br/>13:12, 13, 23<br/>15:6<br/><b>pass</b> 10:22 21:17<br/><b>passed</b> 3:5 4:7<br/><b>Pat</b> 17:14<br/><b>people</b> 5:12<br/>8:21 11:18<br/>19:15, 19, 22<br/>21:22<br/><b>percent</b> 4:6<br/><b>period</b> 7:20<br/>13:5 19:11 22:2<br/><b>permanent</b> 6:11,<br/>20</p> | <p><b>permanently</b><br/>6:16 9:5<br/><b>person</b> 21:16<br/><b>Petersen</b> 8:16<br/><b>photograph</b> 16:4<br/><b>pick</b> 27:11<br/><b>picks</b> 13:1<br/><b>picture</b> 11:9<br/><b>piling</b> 14:13<br/><b>place</b> 7:3, 6<br/><b>pleased</b> 2:4, 14<br/>4:17 31:13, 14<br/><b>plenty</b> 15:5<br/><b>point</b> 4:9 8:4<br/>10:20 19:2<br/>23:20 26:1<br/><b>pointed</b> 26:12, 13<br/><b>pointless</b> 10:16<br/><b>posed</b> 8:18<br/><b>position</b> 5:5<br/><b>positions</b> 12:11,<br/>16<br/><b>positive</b> 26:20<br/><b>post</b> 8:8, 8<br/>10:21 17:8<br/>24:10<br/><b>post-cloture</b> 6:18,<br/>24 8:5 10:14<br/>12:17, 18<br/><b>potential</b> 8:15<br/><b>practice</b> 6:4<br/><b>pray</b> 15:9<br/><b>prayer</b> 15:9<br/><b>precedent</b> 23:3,<br/>7, 8, 10, 13<br/><b>precedents</b> 23:4<br/><b>prelude</b> 14:15,<br/>25 15:13<br/><b>prepared</b> 21:19<br/><b>preparing</b> 31:6<br/><b>Present</b> 1:13 2:2<br/><b>presidency</b> 7:22<br/>20:15, 15<br/><b>President</b> 3:22<br/>4:1 7:9, 11, 18,<br/>19 8:2 12:3, 25<br/>13:18, 19 18:14,<br/>14, 15, 16, 16, 17,<br/>18<br/><b>President's</b> 7:16<br/>13:6<br/><b>presidential</b> 12:2,<br/>9<br/><b>presiding</b> 1:12,<br/>13<br/><b>pretty</b> 12:10<br/>26:23<br/><b>prevent</b> 25:23<br/>26:13<br/><b>private</b> 15:8</p> | <p><b>privileged</b> 12:13<br/><b>probably</b> 23:23<br/><b>problem</b> 11:18,<br/>20 17:9, 11<br/>24:25<br/><b>procedural</b> 7:2<br/>26:1<br/><b>PROCEDURES</b><br/>1:1 2:22<br/><b>proceed</b> 26:10<br/>27:23<br/><b>proceeds</b> 21:20<br/><b>process</b> 3:24<br/>6:15 7:4, 5, 25<br/>12:10 17:17<br/>24:22 26:23<br/>27:4, 7 29:5<br/>31:10<br/><b>prohibit</b> 9:9<br/><b>proposal</b> 5:19,<br/>20 6:10 10:3<br/>14:12, 23 15:15<br/>21:14, 21<br/><b>propose</b> 23:1<br/><b>proposed</b> 3:6<br/>6:14<br/><b>protections</b> 7:2<br/><b>proven</b> 5:11<br/><b>proxy</b> 30:11, 13,<br/>17, 19, 21<br/><b>public</b> 15:10<br/>24:10<br/><b>pursuant</b> 1:10<br/><b>pushes</b> 6:2<br/><b>put</b> 8:24 9:23<br/>13:23 20:20, 21<br/>21:10 27:11<br/><b>puts</b> 10:9<br/><b>putting</b> 17:11<br/><b>puzzled</b> 22:5</p> <p>&lt; Q &gt;<br/><b>qualified</b> 7:5<br/>8:21<br/><b>question</b> 10:20<br/>16:6 29:10<br/><b>questions</b> 8:17<br/>23:12<br/><b>quit</b> 26:14<br/><b>quite</b> 19:25<br/><b>quorum</b> 2:2</p> <p>&lt; R &gt;<br/><b>ranging</b> 5:10<br/><b>ranking</b> 2:9, 12<br/>26:19 28:7<br/><b>rapidly</b> 12:13<br/><b>reach</b> 16:6 17:4<br/><b>Reagan</b> 18:14<br/><b>real</b> 16:22</p> |
|--|---|--|--|---|

|   |  |  |   |   |
|---|--|--|---|---|
| <p><b>really</b> 12:19, 20<br/>16:21 17:16<br/>24:25, 25 25:14<br/>27:3<br/><b>reasonable</b> 14:11<br/><b>reasons</b> 13:4<br/><b>recall</b> 18:25<br/><b>receptions</b> 16:1<br/><b>recognize</b> 4:17<br/><b>recommended</b><br/>10:7<br/><b>record</b> 7:15<br/>20:20, 22<br/><b>record-breaking</b><br/>7:13<br/><b>referred</b> 20:24<br/>22:23<br/><b>reflects</b> 27:5<br/><b>reform</b> 6:2<br/><b>regarding</b> 23:4<br/><b>regardless</b> 3:21<br/><b>regular</b> 16:17<br/><b>Reid</b> 12:19<br/><b>relatively</b> 14:11<br/><b>remember</b> 12:24<br/>13:21 15:21<br/>26:2 28:13, 15<br/><b>remove</b> 23:3<br/><b>report</b> 20:21<br/><b>reported</b> 8:1, 3<br/>13:9 19:20<br/>26:19 31:5<br/><b>reporting</b> 29:11<br/>31:7<br/><b>Republican</b> 3:1<br/>8:18 11:24 12:4,<br/>25 13:20 24:21<br/><b>Republicans</b><br/>7:15 14:8 27:5<br/><b>require</b> 22:21<br/><b>required</b> 7:3<br/>23:7 31:7<br/><b>requires</b> 22:7<br/>25:14<br/><b>requiring</b> 6:8<br/><b>Resolution</b> 2:21,<br/>22, 24 3:3, 4, 5, 7,<br/>17, 20 6:19 23:2,<br/>9 29:11 31:5<br/><b>respected</b> 7:5<br/><b>rest</b> 29:4<br/><b>restore</b> 17:16, 25<br/><b>resurrect</b> 11:22<br/>15:12<br/><b>return</b> 2:6<br/><b>revive</b> 20:6<br/><b>Richard</b> 17:13<br/><b>right</b> 2:11 6:11<br/>11:11 13:3<br/>14:11, 13 15:3</p> | <p>20:11 21:1 26:4<br/>27:15<br/><b>road</b> 18:10<br/><b>Roberts</b> 1:14<br/>29:19, 20<br/><b>role</b> 17:22<br/><b>roll</b> 29:13, 14<br/><b>Room</b> 1:11<br/><b>Roy</b> 1:11<br/><b>rule</b> 4:16 6:18<br/>9:4 19:15 21:12<br/>28:5<br/><b>Rules</b> 1:7 2:3,<br/>19 6:23 8:12<br/>13:12, 24 14:3,<br/>13 18:7 25:1<br/>26:15<br/><b>run</b> 13:1<br/><b>Russell</b> 1:11<br/><b>Ruth</b> 28:12<br/><br/>&lt; S &gt;<br/><b>saying</b> 9:9<br/>12:24 26:2<br/><b>says</b> 18:11<br/><b>Schumer</b> 5:24<br/>12:7, 24 17:16<br/>20:21 26:20<br/>30:12<br/><b>search</b> 17:9<br/><b>second</b> 2:5 4:5<br/>6:20 7:7 9:4<br/>18:18<br/><b>secret</b> 6:5 12:14<br/><b>Secretary</b> 11:12<br/><b>security</b> 5:22<br/><b>see</b> 2:4 11:21,<br/>21 27:13<br/><b>seeing</b> 21:22<br/><b>seen</b> 7:24 24:24<br/><b>select</b> 7:5<br/><b>SENATE</b> 1:2, 6,<br/>11 2:21, 23 3:1,<br/>7, 9 4:5, 13, 15<br/>6:1, 9, 12, 16, 22<br/>8:2, 6, 11, 14<br/>11:9 12:4, 21<br/>13:5 14:3, 6, 15,<br/>25 15:14 16:1,<br/>15, 15, 16, 21<br/>17:11, 13, 20<br/>20:16 22:9, 9<br/>26:3 27:4, 6, 8<br/>28:9 29:8, 11<br/>31:17<br/><b>Senate's</b> 3:18<br/>10:12, 21<br/><b>SENATOR</b> 2:1,<br/>8, 14, 15, 16, 17,<br/>17, 18, 23 3:6, 20<br/>4:13, 17 5:1, 2, 4,</p> | <p>7, 16, 17, 19, 24<br/>6:6, 7, 8, 21, 23<br/>8:18 9:7, 10, 11,<br/>14, 16, 16, 17, 18,<br/>21 10:24, 25, 25<br/>11:2, 5, 5, 14, 17<br/>12:5, 7, 7, 7, 7, 8,<br/>15, 19, 19, 24<br/>14:2, 10 15:18,<br/>18, 20 16:3 17:5,<br/>6, 14, 16, 20 18:1,<br/>3, 5, 9 20:6, 10,<br/>12, 13, 21 21:1, 6,<br/>7, 8 22:11, 14<br/>23:16, 19 24:7, 9,<br/>13, 16, 17, 18, 19<br/>25:5, 6, 6, 11, 17,<br/>17, 18, 19, 22<br/>26:4, 5, 8, 8, 12,<br/>17, 18, 21, 25<br/>27:1, 2, 8, 10, 14,<br/>18, 25 28:3, 4, 5,<br/>6, 19, 20 29:7, 16,<br/>18, 20, 22, 24<br/>30:1, 3, 5, 7, 9, 11,<br/>13, 15, 17, 19, 21,<br/>23, 25 31:15, 16,<br/>19, 20<br/><b>Senators</b> 1:13<br/>2:20 3:10, 11, 21<br/>12:6 13:20<br/>24:24 25:15<br/>28:15<br/><b>send</b> 3:18<br/><b>senior</b> 3:12, 13<br/>9:8<br/><b>sent</b> 20:16<br/><b>serious</b> 3:11<br/><b>serve</b> 31:14<br/><b>served</b> 4:3, 4<br/><b>service</b> 2:19<br/><b>set</b> 20:1 23:4, 6<br/><b>sexual</b> 6:8<br/><b>Shelby</b> 1:13 5:4<br/>6:6 17:14 18:1,<br/>4, 5, 9 24:7, 9, 13<br/>25:5 26:8, 25<br/>27:1, 2, 18 29:21,<br/>22 31:16<br/><b>shouldn't</b> 29:2, 4,<br/>8<br/><b>simple</b> 3:6 5:17<br/>23:6<br/><b>sir</b> 24:8<br/><b>sitting</b> 10:21<br/><b>situation</b> 16:12<br/>21:15<br/><b>slip</b> 7:4<br/><b>slow</b> 13:5<br/><b>slowness</b> 20:18<br/><b>solution</b> 17:9</p> | <p><b>somebody</b> 10:22<br/>27:18<br/><b>sort</b> 10:16<br/><b>SPAN</b> 11:19<br/><b>spare</b> 10:13<br/><b>speak</b> 3:10, 12<br/><b>speaking</b> 28:6<br/><b>speaks</b> 11:14, 17<br/><b>special</b> 20:21<br/><b>specific</b> 5:20<br/><b>spend</b> 28:23<br/><b>spirit</b> 11:22<br/>15:12<br/><b>SR-301</b> 1:11<br/><b>stack</b> 10:6<br/><b>stacked</b> 13:6<br/><b>staff</b> 31:7<br/><b>stalemate</b> 11:8<br/><b>standing</b> 9:22<br/>10:3 23:9<br/><b>standoff</b> 16:6<br/><b>stands</b> 21:10<br/>31:22<br/><b>standstill</b> 16:12<br/><b>stark</b> 7:12<br/><b>start</b> 9:15<br/><b>STATEMENT</b><br/>2:1 5:1<br/><b>States</b> 5:13, 22<br/>14:15<br/><b>States"</b> 5:13<br/><b>stay</b> 18:6<br/><b>steam</b> 10:1<br/><b>Stennis</b> 2:17<br/><b>steps</b> 12:9<br/><b>stop</b> 14:20, 25<br/>27:16<br/><b>stopped</b> 14:19<br/><b>stops</b> 25:4<br/><b>streamlined</b> 3:8<br/><b>strikes</b> 10:11<br/><b>strongly</b> 6:4<br/><b>sub-Cabinet</b><br/>12:16<br/><b>subcommittee</b><br/>13:7<br/><b>subject</b> 17:19<br/><b>success</b> 5:9<br/><b>successful</b> 25:6<br/><b>suggested</b> 24:20<br/><b>suggestion</b> 15:25<br/>21:18 24:20<br/><b>suggestions</b> 21:2<br/><b>summer</b> 28:11<br/><b>supermajority</b><br/>8:11<br/><b>support</b> 3:17<br/>5:25 17:5 18:9,<br/>21 21:9<br/><b>supported</b> 6:4</p> | <p>8:11, 22<br/><b>supposed</b> 31:12<br/><b>Supreme</b> 10:9<br/><b>sure</b> 18:12 25:15<br/><br/>&lt; T &gt;<br/><b>table</b> 25:13<br/><b>tactic</b> 13:4<br/><b>take</b> 4:1 10:1<br/>13:20, 20 14:11<br/>20:4 21:2, 17<br/>28:8<br/><b>taken</b> 3:4 20:1<br/><b>takes</b> 13:13<br/>18:24<br/><b>talk</b> 11:4 15:8<br/>21:20 27:22, 22<br/><b>talked</b> 2:25<br/>20:6 27:8<br/><b>talking</b> 10:11, 18<br/>25:22 28:11<br/><b>technical</b> 31:8<br/><b>tell</b> 14:4<br/><b>telling</b> 18:19<br/><b>temporarily</b> 6:23<br/><b>temporary</b> 8:11<br/><b>Ten</b> 31:3<br/><b>text</b> 3:4<br/><b>Thank</b> 5:2, 15,<br/>23 9:6, 7 11:5<br/>15:17, 18 18:22<br/>22:16 23:22<br/>24:13 26:16<br/><b>Thanks</b> 15:20<br/>28:19<br/><b>theoretical</b> 4:10<br/><b>thing</b> 13:13<br/>17:1 19:2 20:14,<br/>20<br/><b>things</b> 2:10, 11<br/>12:11 19:5 20:5,<br/>8 21:23 25:10<br/>28:22 31:11<br/><b>think</b> 2:25 4:12,<br/>13 9:3, 17 11:7<br/>12:25 13:8, 11,<br/>19, 22 14:10, 18,<br/>23 17:18, 23<br/>18:11 19:19<br/>21:4 22:6 23:23<br/>24:9 25:14, 25<br/>27:14 28:15, 20,<br/>23 29:7 31:16,<br/>20<br/><b>third</b> 8:4<br/><b>Thomas</b> 28:11<br/><b>thorough</b> 7:5<br/><b>thoroughly</b> 8:14<br/><b>thought</b> 12:21<br/>15:24 16:19, 20</p> |
|---|--|--|---|---|

|   |  |   |   |
|---|--|---|---|
| <p>21:10<br/> <b>thought.”</b> 11:20<br/> <b>threatened</b> 9:25<br/> <b>three</b> 29:5<br/> <b>threshold</b> 7:4<br/> 10:8<br/> <b>Thursday</b> 11:11<br/> <b>thwart</b> 3:25<br/> <b>time</b> 2:5 5:21<br/> 6:16, 18 7:3, 7,<br/> 20 8:5, 14 9:1, 4,<br/> 5, 23 10:12, 14,<br/> 16, 21 11:8 13:5,<br/> 14 15:2 16:3<br/> 18:4, 23 19:4, 22,<br/> 25, 25 20:1, 3, 5,<br/> 8 21:13, 18 22:2,<br/> 8 23:14 25:13<br/> 26:2 28:23<br/> 31:12<br/> <b>times</b> 28:6<br/> <b>today</b> 6:10, 19<br/> 7:1, 8 8:13 10:4,<br/> 18 11:7 12:23<br/> 20:9 22:12, 14<br/> 24:21 26:20<br/> 31:9<br/> <b>today’s</b> 3:17<br/> 4:12<br/> <b>told</b> 31:9<br/> <b>tone</b> 24:18<br/> <b>topic</b> 24:15<br/> <b>tough</b> 16:18<br/> <b>tourism</b> 5:10<br/> <b>tradition</b> 11:25<br/> <b>train</b> 27:16<br/> <b>training</b> 6:9<br/> 27:12<br/> <b>transportation</b><br/> 5:10 11:12<br/> <b>truly</b> 16:21<br/> <b>Truman</b> 7:11<br/> <b>Trump</b> 7:18<br/> 13:18 16:7<br/> 18:18 20:15, 16<br/> <b>trust</b> 17:25, 25<br/> <b>try</b> 12:5, 9<br/> 16:23 18:2<br/> 28:13<br/> <b>trying</b> 9:24<br/> 11:7 20:6<br/> <b>turn</b> 14:9<br/> <b>Twelve</b> 17:18<br/> <b>two</b> 3:20 22:18<br/> 25:19 27:21</p> <p>&lt; U &gt;<br/> <b>U.S</b> 1:6<br/> <b>Udall</b> 30:16<br/> <b>unable</b> 8:17</p> | <p><b>unanimous</b> 22:7,<br/> 19 27:16 31:6<br/> <b>unanimously</b><br/> 27:21<br/> <b>understand</b> 6:25<br/> <b>understanding</b><br/> 25:14<br/> <b>United</b> 14:15<br/> <b>unproductive</b><br/> 3:24<br/> <b>unwritten</b> 28:5<br/> <b>use</b> 10:14, 20<br/> 15:23, 23 19:17</p> <p>&lt; V &gt;<br/> <b>vacancies</b> 16:7<br/> <b>variety</b> 13:4<br/> <b>vast</b> 26:23<br/> <b>version</b> 14:24<br/> <b>vet</b> 8:14 18:24<br/> <b>vetting</b> 8:25<br/> 18:25<br/> <b>view</b> 26:1 29:7,<br/> 9<br/> <b>violating</b> 28:5<br/> <b>violations</b> 6:2<br/> <b>virtually</b> 2:25<br/> 13:17<br/> <b>visitors</b> 2:5<br/> <b>voice</b> 4:8 23:24<br/> <b>vote</b> 3:7, 18<br/> 6:22 10:2, 15<br/> 11:12 14:5, 6, 23,<br/> 24 16:25 19:23,<br/> 25 21:12, 16<br/> 22:21 23:12, 24<br/> 25:12, 13, 24<br/> 26:3, 14 28:25<br/> 29:1, 8, 12, 12, 13<br/> 31:9<br/> <b>voted</b> 6:16<br/> <b>voters</b> 3:25<br/> <b>votes</b> 4:8, 8, 11<br/> 13:24 16:18<br/> 18:13 19:7, 10<br/> 21:13 31:2<br/> <b>voting</b> 26:6 29:7</p> <p>&lt; W &gt;<br/> <b>wage</b> 15:23<br/> <b>waiting</b> 10:21<br/> 21:24<br/> <b>walk</b> 22:1<br/> <b>want</b> 4:14 9:9,<br/> 15 12:20 17:16<br/> 18:7 20:20 21:8<br/> 26:3, 22 28:25<br/> 29:6, 8 31:9<br/> <b>wanted</b> 12:19<br/> 23:19<br/> <b>wants</b> 14:1, 2</p> | <p><b>War</b> 14:18, 19<br/> 15:24<br/> <b>warned</b> 14:2<br/> <b>Warner</b> 30:18<br/> <b>Washington</b> 1:8<br/> <b>wasting</b> 10:12, 16<br/> <b>water</b> 25:4<br/> <b>way</b> 4:15 11:22<br/> 14:13 15:13<br/> 18:20 19:3 21:3<br/> 22:9 25:25<br/> 26:20 27:17<br/> <b>wedding</b> 16:1<br/> <b>Wednesday</b> 1:4<br/> 11:16 15:9<br/> <b>week</b> 5:14<br/> 11:12, 16 19:12,<br/> 24<br/> <b>welcome</b> 2:14<br/> 5:3, 7<br/> <b>welcomed</b> 28:18<br/> <b>well</b> 4:2, 3 5:25<br/> 8:22 10:5 13:11<br/> 18:3 27:21<br/> 28:13, 19<br/> <b>went</b> 6:17 25:20<br/> <b>wheels</b> 27:12<br/> <b>Whip</b> 28:24<br/> <b>White</b> 11:24<br/> <b>Wicker</b> 1:14<br/> 2:18 30:2, 3<br/> <b>willing</b> 28:22<br/> <b>wish</b> 18:10, 20<br/> <b>wished</b> 14:5<br/> <b>withdrawn</b> 8:20<br/> <b>witnesses</b> 11:3<br/> <b>words</b> 21:15<br/> 22:1<br/> <b>work</b> 3:1 8:24<br/> 10:5 15:6 20:7<br/> 21:5, 8 27:7, 8<br/> 28:2<br/> <b>worked</b> 2:9<br/> 5:17, 21 6:6<br/> 8:22, 24 12:6<br/> 28:1<br/> <b>working</b> 5:5, 9,<br/> 11 6:5 27:6<br/> 31:11<br/> <b>works</b> 25:16<br/> 27:13 28:2<br/> <b>World</b> 14:18<br/> <b>world’s</b> 6:12<br/> <b>worn</b> 19:22<br/> <b>worried</b> 29:6<br/> <b>wrong</b> 16:18<br/> 26:5</p> <p>&lt; Y &gt;</p> | <p><b>year</b> 6:5 7:12,<br/> 13, 16, 18, 20, 21<br/> 8:2, 3 18:18<br/> <b>years</b> 5:8 6:21<br/> 7:10 12:8, 14, 16<br/> 16:8, 13 22:9<br/> <b>yesterday</b> 26:7<br/> 27:2<br/> <b>yield</b> 9:18 10:23<br/> 25:17<br/> <b>younger</b> 16:23<br/> 21:23</p> |
|---|--|---|---|