

Testimony of the Honorable Tom Davis
Hearing on “Raising the Bar for Congress: Reform Proposals for the 21st Century”
U. S. Senate Committee on Homeland Security and Governmental Affairs
March 14, 2012

Chairman Lieberman, Ranking Member Collins, members of the committee:

Thank you for inviting me to present my views on congressional reform. My name is Tom Davis, and I know some of you on this committee well, having served for seven terms in the House, representing Virginia's 11th district. As Chairman of your companion committee in the House, for four years, I had the pleasure of working with many of you on a variety of issues.

When I left the House in 2008, I was concerned that rampant partisanship was turning Congress into a totally dysfunctional institution...that every year it was becoming harder to find agreement on issues large and small.

My concerns have only grown since I left Congress.

Considering the amount of partisan warfare that occurs here every day, the American people might be surprised to know that most of the people in Congress that I know dislike this nonsense just as much as they do.

Which leads to a pretty simple question: If members of Congress are so tired of the partisan dysfunction, why does nothing appear to change?

I believe that No Labels, the group I helped co-found 15 months ago, has an answer. In short, a big part of the problem is the institution itself.

The rules, the traditions and the procedures in the House and the Senate all conspire to harden partisan lines and discourage problem solving.

It's important to note that I'm not talking about the congressional rules and procedures enumerated in the Constitution. I'm talking about troubling norms that have developed in Congress over the past few decades. The good news then is that Congress has the power to change itself, and it can do so in fairly short order.

The *Make Congress Work!* action plan that No Labels released a few months ago is notable not only for the quality of the ideas, but also the simplicity. Only one of the 12 proposals – the No, Budget, No Pay provision that Sen. Heller and Rep. Cooper will be discussing today – requires a new law. All the others can be handled with simple rule changes, leadership decisions or even behavioral changes that can be adopted before the next Congress is seated in 2013.

I'd like to take this opportunity to discuss three *Make Congress Work!* proposals in particular.

First, presidential appointments. When our Founders gave the Senate “Advise and Consent” power over presidential appointments, their intent was to encourage the President to appoint qualified people and to avoid conflicts of interest. Unfortunately, “Advise and Consent” has too often turned into “Delay and Obstruct”. This has resulted in many qualified individuals from the private sector, having given up their stock options, severed their business ties and sold their investments, being left to dangle, not because of any failure on their part, but as collateral damage because a Senator wanted to exercise his or her opposition to some ancillary matter.

This has resulted in the unintended effect of discouraging qualified people from entering government service at high levels, essentially dumbing down the pool of talent available to operate complex government programs to reinvent and innovate systems that cry for competent leadership. There is no way to assess the net cost to taxpayers of this discouragement of government service, but it is if far from insignificant.

Today, key presidential appointments are routinely held up for trivial or unrelated reasons or to serve the narrow interests of a single senator.

In the past few years, the directorship of FEMA, key positions at the Treasury Department and the Federal Reserve and numerous federal judgeships have been left unfilled for reasons that have little or nothing to do with the quality of the nominees.

This is unacceptable. When we elect a president -- regardless of which party he or she is from -- that person should be able to staff their administration with capable people who can implement their agenda. If the appointees are flawed or unqualified, the Senate has every right to reject them. But, holding them up just because doing so may leverage another issue is not fair to the nominee, nor fair to the Country.

The No Labels solution is simple. All presidential nominations should receive an up or down vote within 90 days of the nomination being received by the Senate. This time frame includes both committee and floor action. And if a nominee’s name is not confirmed or rejected within 90 days, the nominee would be confirmed by default. The sixty vote threshold can be preserved, so that the minority rights are protected, but nominees and administrations would be guaranteed a vote and some closure to an often unending process.

The second proposal I want to discuss deals with the filibuster. For most of the Senate’s history, filibusters were rare, and they required members to stand up for hours on end to make their case. Neither is true anymore.

In the first 50 years of the filibuster, it was used only 35 times and that was when a two-thirds majority was needed to invoke cloture. In the last two years alone, it was used over 100 times. And Senators don’t even have to show up on the floor to explain themselves – just signaling their intent to filibuster effectively stalls legislation.

The upshot is that even routine legislation now must clear 60 votes. This is completely contrary to the original intent- that a supermajority should be required only in select circumstances including the passage of treaties, constitutional amendments and motions of impeachment.

Constant filibustering also gums up the Senate calendar. Every filibuster kicks off a complex set of Senate procedures that effectively brings the institution to a stop for as long as a week and prevents other critical issues from being addressed.

I recognize that the filibuster is a powerful tool that empowers the minority to force consensus on complex issues. I also recognize that the Senate should not be a carbon copy of the House, a body where tyranny of the majority rules. The Senate is the saucer that cools the heat from the House's cup. But, let's face it. The saucer has turned into a thermos, bottling up appointments and legislation that even super majorities support, simply because the required floor time is not available and the disincentives to obstruct (i.e. taking the floor for an extended period) are not present.

So, here is the No Labels filibuster fix. If senators want to filibuster legislation, they should actually have to explain why in public. We propose a two-part solution. One, if senators want to halt action on a bill, they must take to the floor and hold it through sustained debate. And two, filibusters should no longer be allowed on motions to proceed. This step alone would cut the number of filibusters in half in one fell swoop.

Finally, I'd like to discuss an idea that I believe is critically important to dealing with our fiscal problems.

When leaders in Washington debate our finances, we routinely use different baselines, projections and assumptions, which often conveniently support whatever policy we are pushing at the moment. To quote an old Scottish writer, many Washington leaders "use statistics as a drunken man uses lampposts - for support rather than for illumination."

Members of Congress need to agree what's on our federal balance sheet before we can have any hope of stemming the tide of red ink.

That's why No Labels believes that every year, a nonpartisan leader, such as the comptroller general, should deliver a televised fiscal update in-person to a joint session of Congress. The president, vice president, all cabinet members, senators and congressmen would have to attend this fiscal update session. And everyone would have to take individual responsibility for the accuracy and completeness of the comptroller general's report by signing the report, just as CEOs are required to affirm the accuracy of their company's financial reporting.

Different opinions are the life blood of political bodies, but today's climate purports different sets of facts on the same issue, with no definitive authority, often altered to support a pre-existing opinion. This oftentimes results in debates turning into dueling talking points and opponents talking over each other.

Allowing members of both parties to at least agree to the same set of facts could open the opportunity to bring legislative discourse back to civility, respect and compromise.

These are just three of the proposals in *Make Congress Work!*, and I hope you will give strong consideration to the entire action plan.

I would like to close by saying that these reforms aren't just essential to the health of our political system, but are essential to the health of our economy and our budget, which I know is a foremost priority of everyone on this committee.

Some of you might have read this month's *Harvard Business Review*, which argued that our dysfunctional political system is starting to have a profoundly negative impact on the American economy. Businesses have little confidence that Congress can tackle the serious challenges we are facing and over time that will reduce their willingness to invest and grow in America.

It doesn't need to be this way. Congress has many exceptional people, who want to solve America's problems. However, they operate under procedures that make it nearly impossible to get the job done.

Congress does have the power to fix itself, and I hope you will exercise that power without delay.

Thank you for your consideration.