The Majority-Approval Reform:
Restoring Fairness on Judicial Nominations in the Senate

The majority-approval reform is grounded in Article I, Section 5 of the U.S. Constitution that empowers the Senate to "determine the Rule of its Proceedings."

Goal: Restore the Senate tradition of approving the President's nominations by a simple majority vote

Means: Use a simple majority vote to set a new precedent without changing Rule XXII of the standing rules. For instance, a Senator would raise a point of order to close debate on a nominee. The presiding officer would sustain the point of order, thereby setting a new, binding precedent. The minority's appeal of the ruling could be tabled with a simple majority vote.

Historic Examples: The use of a simple majority vote to set precedents is as old as the Senate. In recent history, Senate Majority Leader Robert Byrd (D-WV) generated four precedents that allowed a simple majority to change Senate procedures without altering the text of the standing rules. Two of Byrd's precedents overturned precedents then standing, and two reinterpreted the plain language of an existing standing rule. The precedents were made by a point of order and sustained with a simple majority vote:

1. Ending post-cloture filibusters (1977)
2. Limiting amendments to appropriations bills (1979)
3. Governing consideration of nominations (1980)
4. Governing voting procedures (1987)

Does the majority-approval option undermine the principle of the Senate as a continuing body?
No. The Senate has remained a continuing body even though precedents affecting Senate procedure are established throughout the year by simple majority vote.

Does the majority-approval option erase the differences between the House and Senate?
No. The Senate will remain the "saucer that cools the hot cup of tea." Holds, legislative filibusters, and unanimous consent agreements will continue to govern the day-to-day actions of the Senate, empowering the minority to stop the majority.

Will the majority-approval option undermine the ability of a future Republican minority to defend its rights?
No. Never has a Republican minority stopped a judicial nominee with majority support from getting an up-or-down vote on the Senate Floor. Not until 2003 did that happen – under the Democratic Minority of Tom Daschle and Harry Reid. The majority-approval option simply restores the 200-year tradition of the U.S. Senate.

Will the majority-approval option lead to majoritarian rule?
No. The filibuster is an important feature of our bicameral legislature that will be preserved. Restoring simple-majority approval of nominations will not lead to the elimination of the minority's rights or the legislative filibuster. Both parties agree that legislative filibusters should be retained to protect the rights of the minority and individual Senators.