So as our citizens face heart-rending decisions every day, tonight every Senator has a choice to make as well. That choice: Are you going to do all you can to avert the next preventable death? I hope so. I urge an aye vote to stop this filibuster.

Mr. President, I advise my Members that in 1984 the Senate adopted a resolution, S. 40, to impose a requirement that Senators vote from their desks. I know we do not do this all the time but I ask tonight we do vote from our desks and follow the rule, S. Res. 40, and have Senators vote from their desks.

CLOTURE MOTION

The PRESIDING OFFICER. The motion to invoke cloture having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Reid amendment No. 3276 to the Reid substitute amendment No. 2786 to H.R. 3590, the Service Members Home Ownership Tax Act of 2009.

Christopher J. Dodd, Richard Durbin, Max Baucus, Paul G. Kirk, Jr., Claire McCaskill, Jon Tester, Maria Cantwell, Barbara A. Mikulski, Mark Udall, Arlen Specter, Sherrod Brown, Mark Begich, Sheldon Whitehouse, Bill Nelson, Roland W. Burris, Kirsten E. Gillibrand, Ron Wyden.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call is waived. The question is, Is it the sense of the Senate that debate on amendment No. 3276 to the Reid substitute amendment No. 2786 to H.R. 3590, the Service Members Home Ownership Tax Act of 2009, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The yeas and nays resulted—yeas 60, nays 40, as follows:

[Rollcall Vote No. 385 Leg.]

YEAS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—40

Alexander	Burr	Cornyn
Barrasso	Chambliss	Crapo
Bennett	Coburn	DeMint
Bond	Cochran	Ensign
Brownback	Collins	Enzi
Bunning	Corker	Graham
Grassley	LeMieux	Shelby
Gregg	Lugar	Snowe
Hatch	McCain	Thune
Hutchison	McConnell	Vitter
Inhofe	Murkowski	Voinovich
Isakson	Risch	Wicker
Johanns	Roberts	
Kyl	Sessions	

The PRESIDING OFFICER (Mrs. SHAHEEN). On this vote, the yeas are 60, the nays are 40. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The Chair announces that because cloture has been invoked, the motion to refer falls.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I would like to thank the employees in the Office of the Secretary of the Senate who read the managers' amendment aloud for more than 7 hours on Saturday, December 19, 2009. They are:

Kathie Alvarez, John Merlino, Mary Anne Clarkson, Scott Sanborn, Leigh Hildebrand, Sheila Dwyer, Adam Gottlieb, Joe Johnston, Elizabeth MacDonough, Ken Dean, Michelle Haynes, Patrice Boyd, William Walsh, Valentin Mihalache, and Cassie Byrd.

The readers represent the offices of the Legislative Clerk, Assistant Secretary of the Senate, Parliamentarian, Bill Clerk, Journal Clerk, Executive Clerk, Daily Digest, Enrolling Clerk, and the Official Reporters of Debates.

SENATE PROCEDURE AND THE SANDERS AMENDMENT

Mr. CARDIN. Mr. President, on Wednesday, the junior Senator from Vermont offered his ''single-payer'' health insurance amendment, amdt. No. 2837, to H.R. 3590. Under rule XV of the Standing Rules of the Senate, an amendment must be read aloud into the RECORD unless its reading is dispensed with by unanimous consent. Such consent is routinely granted but in this instance, the junior Senator from Oklahoma objected so the clerks commenced with reading the 767-page amendment. After several hours passed, Senator SANDERS withdrew his amendment.

Later in the day, the Republican leader came to the floor and complained that ''the majority somehow convinced the Parliamentarian to break with the longstanding precedent and practice of the Senate'' with regard to the reading of the amendment. He claimed that continued reading of the amendment could not be dispensed with absent consent being granted, suggesting that Senator SANDERS had no right to interrupt the reading to withdraw his amendment. The Republican leader cited Riddick's Senate Procedure: Precedents and Practices, pages 43–44, which states, in part:

Under Rule XV, paragraph 1, and Senate precedents, an amendment shall be read by the Clerk before it is up for consideration or before the same shall be debated unless a request to waive the reading is granted; in practice that includes an ordinary amendment or an amendment in the nature of a substitute, the reading of which may not be dispensed with except by unanimous consent, and if the request is denied the amendment must be read and further interruptions are not in order; interruptions of the reading of an amendment that has been proposed are not in order, even for the purpose of proposing a substitute amendment to a committee amendment which is being read.

When an amendment is offered the regular order is it reading, and unanimous consent is required to call off the reading.

A Senator has, at the sufferance of the Senate, reserved the right to object to dispensing with further reading of an amendment.

Later on Wednesday, the senior Senator from Illinois ably addressed the Republican leader's concerns but I bring the matter up again because I was presiding at the time Senator SANDERS withdrew his amendment and Senator COBURN called for regular order. I received several phone calls afterwards from individuals who claimed that I acted erroneously in permitting Senator SANDERS to withdraw his amendment so I would like to set the record straight.

First of all, before Senator SANDERS withdrew his amendment, I consulted with the Senior Assistant Parliamentarian, who was on the floor while I was presiding. He assured me that a Senator has the right to withdraw an amendment if no action has been taken on it. No action can be taken on an amendment until it is officially pending. An amendment is not officially pending until it has been read into the RECORD or such reading has been waived by unanimous consent.

It is important to understand that while the Presiding Officer, not the Parliamentarian, makes rulings, it would be unusual for him or her to ignore the advice of the Parliamentarian. Martin Gold, who was the senior floor staffer to two former Republican majority leaders, Howard H. Baker, Jr., and William H. Frist, MD, of Tennessee, writes in his definitive book, ''Senate Procedure and Practice,'' that former Parliamentarian Floyd M. Riddick ''claimed that in twenty-five years of advising the presiding officer, the Senate only once voted to overturn him on appeal. He also cites an example of Vice President Alben Barkley ignoring the parliamentarian's advice, only to be overturned on appeal.'' The Parliamentarian is a nonpartisan officer of the Senate. In the 72 years since the position was created, there have been just five Parliamentarians. The Parliamentarian and his staff are experienced professionals. I sought and received the Parliamentarian's advice on this matter and I followed it, which is how the Senate usually operates.

The Parliamentarian and his staff conducted extensive research on rule XV and the precedents governing the reading and withdrawal of amendments prior to what happened during Wednesday's session. While the Riddick's text the Republican leader cited seems plain enough, it is trumped by section 2 of rule XV itself, which clearly and succinctly states:

Any motion, amendment, or resolution may be withdrawn or modified by the mover at any time before a decision, amendment, or ordering of the yeas and nays, except a motion to reconsider, which shall not be withdrawn without leave.

Prior to the time Senator SANDERS withdrew his amendment, no action had been taken on it that would have prevented such a move without consent for a very simple reason: the amendment wasn't officially pending while it was being read into the RECORD. So Senator SANDERS had an unfettered right to withdraw it under such conditions.

The precedent for a Senator's ability to withdraw an amendment while it is being read without gaining consent first, either to dispense with the reading or to withdraw it, was firmly established in 1950 and reiterated in 1992. On April 14, 1950, Senator Forrest C. Donnell insisted that an amendment being offered by Senator William Benton be read in its entirety. Afterwards, Senator Benton sought unanimous consent to withdraw his amendment. Senator Donnell made a parliamentary inquiry of the Chair, asking the Presiding Officer whether a Senator may withdraw an amendment while it is being read. He further stated that if consent were necessary he would object. The Presiding Officer replied that an amendment may indeed be withdrawn while it is being read, citing the language in rule XV I just mentioned. And Senator Benton withdrew his amendment.

On September 24, 1992, Senator Brock Adams offered an amendment to a tax bill and sought consent twice to dispense with reading it. In both instances, Senator Bob Packwood objected so the clerk proceeded to read the amendment aloud. Later, Senator Adams asked for ''permission'' to withdraw the amendment and the Chair replied affirmatively that he had the right to do so.

The 1950 precedent is cited on page 119 of Riddick's for the proposition that an amendment may be withdrawn ''even as soon as it has been read'' but it is, in fact, the same ruling as the 1992 precedent, that a Senator may withdraw his amendment while it is being read.

The Republican leader did not refer to the 1950 precedent in his comments on Wednesday but spoke disparagingly of what happened in 1992, saying, ''the Chair made a mistake and allowed something similar (to Senator SANDERS' move) to happen. But one mistake does not a precedent make.''

The Parliamentarian doesn't share the Republican leader's contention that the 1992 action was a ''mistake,'' not a precedent. The Parliamentarian's view is echoed by Walter Oleszek, the noted senior specialist in American National Government at the Congressional Research Service, CRS, who wrote last year, ''Senators are free to modify or withdraw their amendments until the Senate takes ''action'' on them.'' This is from Senate Amendment Process: General Conditions and Principles, CRS Report 98–707, May 19, 2008. Martin Gold's book, ''Senate Procedure and Practice,'' states:

When a senator sends an amendment to the desk, he continues to ''own'' that amendment in the sense that he can modify or withdraw it *at will* (my emphasis) . . . Once ''action'' has been taken on the amendment, that situation changes, and the senator can modify or withdraw his amendment only by unanimous consent. This is from page 102.

The minority has tried to argue that there was Senate action on the Sanders amendment because the Senate previously had agreed to a unanimous consent request defining the amendment and the Hutchison motion to recommit as the only propositions in order at that stage and prohibiting amendments to them. It is true that if an amendment is on a defined list of the only amendments made in order, that amendment when pending cannot be withdrawn except by unanimous consent. But that order is irrelevant in this case because, as I mentioned before, the Sanders amendment was not pending and could not be until it was read in full or unless the reading was dispensed with by unanimous consent. Another way to put it is that the reading of the amendment was not ''interrupted'' by Senator SANDERS; in withdrawing it he obviated the reason for a reading. The order allowed but did not require, as it could not, that Senator SANDERS offer the amendment and take steps to make it pending.

So, to summarize, rule XV of the Standing Rules of the Senate and the 1950 and 1992 precedents are clear that Senator SANDERS was well within his rights to withdraw the amendment, the reading of it notwithstanding. The Parliamentarian advised me accordingly and I followed his advice. I would add that Senator COBURN never explicitly objected to Senator SANDERS withdrawing the amendment. He called for regular order. While regular order was indeed the reading of the amendment, that status couldn't prevent Senator SANDERS from exercising his right to withdraw it.

Finally, I regret that several of my colleagues on the other side of the aisle made comments that were critical of the Parliamentarian and his staff following this incident. The current Parliamentarian helped to write, edit, and revise Riddick's Senate Procedure and he has served in his current capacity as Chief Parliamentarian for 17 years and counting, and as a Senate Parliamentarian for 33 years. He and his staff have a combined total of 84 years of experience. They are professionals who serve this institution and the American people with distinction.

ORDERS FOR MONDAY, DECEMBER 21, 2009

Mr. KAUFMAN. Madam President, I ask unanimous consent that the Senate now stand in recess until 12 noon today, that immediately upon reconvening at noon and after any leader time, the Senate then resume consideration of H.R. 3590, with the time until 12:30 p.m. equally divided and controlled between the two leaders or their designees; that from 12:30 p.m. to 6:30 p.m., there be 1-hour alternating blocks of time, with the majority controlling the first block; that all postcloture time continue to run during any recess, adjournment, or period of morning business until 6:30 p.m. Monday.

The PRESIDING OFFICER. Without objection, the request is agreed to.

RECESS UNTIL 12 P.M. TODAY

The PRESIDING OFFICER. The Senate stands in recess until 12 p.m. today.

Thereupon, the Senate, at 1:33 a.m., recessed until 12 p.m. and reassembled when called to order by the Presiding Officer (Mr. ROCKEFELLER).

SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will now report.

The bill clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Reid amendment No. 3276 (to amendment No. 2786), of a perfecting nature.

Reid amendment No. 3277 (to amendment No. 3276), to change the enactment date.

Reid amendment No. 3278 (to the language proposed to be stricken by amendment No. 2786), to change the enactment date.

Reid amendment No. 3279 (to amendment No. 3278), to change the enactment date.

The PRESIDING OFFICER. Under the previous order, the time until 12:30 shall be equally divided and controlled between the two leaders or their designees.

The assistant Democratic leader is recognized.

Mr. DURBIN. Mr. President, this morning we are continuing to run time postcloture on the managers' amendment. Following any leader remarks, the time until 12:30 p.m. is equally divided between the two leaders or their designees. Senator REID has asked me to serve as his designee on the Democratic side. At 12:30 p.m., we will begin alternating 1-hour blocks of time until 6:30 p.m., with the majority controlling