

SA 1472. Mr. TOOMEY (for himself, Mrs. McCASKILL, Mr. DEMINT, Mr. UDALL of Colorado, Mr. RUBIO, Ms. AYOTTE, Mr. PORTMAN, Mr. THUNE, and Mr. JOHANNES) submitted an amendment intended to be proposed by him to the bill S. 2038, supra; which was ordered to lie on the table.

SA 1473. Mr. COBURN (for himself, Mr. UDALL of Colorado, Mr. McCAIN, Mr. BURR, Mrs. McCASKILL, and Mr. PAUL) submitted an amendment intended to be proposed by him to the bill S. 2038, supra; which was ordered to lie on the table.

SA 1474. Mr. COBURN (for himself and Mr. McCAIN) submitted an amendment intended to be proposed by him to the bill S. 2038, supra; which was ordered to lie on the table.

SA 1475. Mr. COBURN (for himself, Mr. McCAIN, and Mr. JOHNSON of Wisconsin) submitted an amendment intended to be proposed by him to the bill S. 2038, supra; which was ordered to lie on the table.

SA 1476. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 2038, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1470. Mr. REID (for himself, Mr. BROWN of Massachusetts, Mr. LIEBERMAN, Ms. COLLINS, Mrs. GILLIBRAND, Mr. LEVIN, and Mr. FRANKEN) submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stop Trading on Congressional Knowledge Act of 2012” or the “STOCK Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **MEMBER OF CONGRESS.**—The term “Member of Congress” means a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(2) **EMPLOYEE OF CONGRESS.**—The term “employee of Congress” means—
(A) an employee of the Senate; or
(B) an employee of the House of Representatives.

(3) **EXECUTIVE BRANCH EMPLOYEE.**—The term “executive branch employee”—

(A) has the meaning given the term “employee” under section 2105 of title 5, United States Code; and

(B) includes—

(i) the President;

(ii) the Vice President; and

(iii) an employee of the United States Postal Service or the Postal Regulatory Commission.

(4) **JUDICIAL OFFICER.**—The term “judicial officer” has the meaning given that term under section 109(10) of the Ethics in Government Act of 1978.

SEC. 3. PROHIBITION OF THE USE OF NONPUBLIC INFORMATION FOR PRIVATE PROFIT.

The Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives shall issue interpretive guidance of the relevant rules of each chamber, including rules on conflicts of interest and gifts, clarifying that a Member of Congress and an em-

ployee of Congress may not use nonpublic information derived from such person’s position as a Member of Congress or employee of Congress or gained from the performance of such person’s official responsibilities as a means for making a private profit.

SEC. 4. PROHIBITION OF INSIDER TRADING.

(a) **AFFIRMATION OF NON-EXEMPTION.**—Members of Congress and employees of Congress are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

(b) **DUTY.**—

(1) **PURPOSE.**—The purpose of the amendment made by this subsection is to affirm a duty arising from a relationship of trust and confidence owed by each Member of Congress and each employee of Congress.

(2) **AMENDMENT.**—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u-1) is amended by adding at the end the following:

“(g) **DUTY OF MEMBERS AND EMPLOYEES OF CONGRESS.**—

“(1) **IN GENERAL.**—For purposes of the insider trading prohibitions arising under the securities laws, including section 10(b) and Rule 10b-5 thereunder, each Member of Congress or employee of Congress owes a duty arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such person’s position as a Member of Congress or employee of Congress or gained from the performance of such person’s official responsibilities.

“(2) **DEFINITIONS.**—In this subsection—

“(A) the term ‘Member of Congress’ means a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico; and

“(B) the term ‘employee of Congress’ means—

“(i) an employee of the Senate; or

“(ii) an employee of the House of Representatives.

“(3) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the Commission under those provisions.”.

SEC. 5. CONFORMING CHANGES TO THE COMMODITY EXCHANGE ACT.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended—

(1) in paragraph (3), in the matter preceding subparagraph (A)—

(A) by inserting “or any Member of Congress or employee of Congress (defined in this subsection as those terms are defined in section 2 of the Stop Trading on Congressional Knowledge Act of 2012)” after “Federal Government,” the first place it appears;

(B) by inserting “Member,” after “position of the”; and

(C) by inserting “or by Congress” before “in a manner”; and

(2) in paragraph (4)—

(A) in subparagraph (A), in the matter preceding clause (i)—

(i) by inserting “or any Member of Congress or employee of Congress” after “Federal Government,” the first place it appears;

(ii) by inserting “Member,” after “position of the”; and

(iii) by inserting “or by Congress” before “in a manner”;

(B) in subparagraph (B), in the matter preceding clause (i), by inserting “or any Member of Congress or employee of Congress” after “Federal Government,”; and

(C) in subparagraph (C)—

(i) in the matter preceding clause (i), by inserting “or by Congress”.

(I) before “that may affect”; and

(II) before “in a manner”; and

(ii) in clause (iii), by inserting “to Congress, or any Member of Congress or employee of Congress” after “Federal Government”.

SEC. 6. PROMPT REPORTING OF FINANCIAL TRANSACTIONS.

(a) **REPORTING REQUIREMENT.**—Section 101 of the Ethics in Government Act of 1978 is amended by adding at the end the following subsection:

“(j) Not later than 30 days after any transaction required to be reported under section 102(a)(5)(B), a Member of Congress or officer or employee of Congress shall file a report of the transaction.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to transactions occurring on or after the date that is 90 days after the date of enactment of this Act.

SEC. 7. REPORT ON POLITICAL INTELLIGENCE ACTIVITIES.

(a) **REPORT.**—

(1) **IN GENERAL.**—Not later than 12 months after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Congressional Research Service, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the role of political intelligence in the financial markets.

(2) **CONTENTS.**—The report required by this section shall include a discussion of—

(A) what is known about the prevalence of the sale of political intelligence and the extent to which investors rely on such information;

(B) what is known about the effect that the sale of political intelligence may have on the financial markets;

(C) the extent to which information which is being sold would be considered non-public information;

(D) the legal and ethical issues that may be raised by the sale of political intelligence;

(E) any benefits from imposing disclosure requirements on those who engage in political intelligence activities; and

(F) any legal and practical issues that may be raised by the imposition of disclosure requirements on those who engage in political intelligence activities.

(b) **DEFINITION.**—For purposes of this section, the term “political intelligence” shall mean information that is—

(1) derived by a person from direct communications with executive branch and legislative branch officials; and

(2) provided in exchange for financial compensation to a client who intends, and who is known to intend, to use the information to inform investment decisions.

SEC. 8. PUBLIC FILING AND DISCLOSURE OF FINANCIAL DISCLOSURE FORMS OF MEMBERS OF CONGRESS AND CONGRESSIONAL STAFF.

(a) **PUBLIC, ON-LINE DISCLOSURE OF FINANCIAL DISCLOSURE FORMS OF MEMBERS OF CONGRESS AND CONGRESSIONAL STAFF.**—

(1) **IN GENERAL.**—Not later than August 31, 2012, or 90 days after the date of enactment of this Act, whichever is later, the Secretary of the Senate and the Sergeant at Arms of the Senate, and the Clerk of the House of Representatives, shall ensure that financial disclosure forms filed by Members of Congress, officers of the House and Senate, candidates for Congress, and employees of the Senate and the House of Representatives in calendar year 2012 and in subsequent years pursuant to title I of the Ethics in Government Act of 1978 are made available to the public on the respective official websites of

the Senate and the House of Representatives not later than 30 days after such forms are filed.

(2) **EXTENSIONS.**—The existing protocol allowing for extension requests for financial disclosures shall be retained. Notices of extension for financial disclosure shall be made available electronically under this subsection along with its related disclosure.

(3) **REPORTING TRANSACTIONS.**—In the case of a transaction disclosure required by section 101(j) of the Ethics in Government Act of 1978, as added by this Act, such disclosures shall be filed not later than 30 days after the transaction. Notices of extension for transaction disclosure shall be made available electronically under this subsection along with its related disclosure.

(4) **EXPIRATION.**—The requirements of this subsection shall expire upon implementation of the public disclosure system established under subsection (b).

(b) **ELECTRONIC FILING AND ON-LINE PUBLIC AVAILABILITY OF FINANCIAL DISCLOSURE FORMS OF MEMBERS OF CONGRESS, OFFICERS OF THE HOUSE AND SENATE, AND CONGRESSIONAL STAFF.**—

(1) **IN GENERAL.**—Subject to paragraph (6) and not later than 18 months after the date of enactment of this Act, the Secretary of the Senate and the Sergeant at Arms of the Senate and the Clerk of the House of Representatives shall develop systems to enable—

(A) electronic filing of reports received by them pursuant to section 103(h)(1)(A) of title I of the Ethics in Government Act of 1978; and

(B) public access to financial disclosure reports filed by Members of Congress, Officers of the House and Senate, candidates for Congress, and employees of the Senate and House of Representatives, as well as reports of a transaction disclosure required by section 101(j) of the Ethics in Government Act of 1978, as added by this Act, notices of extensions, amendments and blind trusts, pursuant to title I of the Ethics in Government Act of 1978 through databases that—

(1) are maintained on the official websites of the House of Representatives and the Senate; and

(ii) allow the public to search, sort and download data contained in the reports.

(2) **LOGIN.**—No login shall be required to search or sort the data contained in the reports made available by this subsection. A login protocol with the name of the user shall be utilized by a person downloading data contained in the reports. For purposes of filings under this section, section 105(b)(2) of the Ethics in Government Act of 1978 does not apply.

(3) **PUBLIC AVAILABILITY.**—Pursuant to section 105(b)(1) of title I of the Ethics in Government Act of 1978, electronic availability on the official websites of the Senate and the House of Representatives under this subsection shall be deemed to have met the public availability requirement.

(4) **FILERS COVERED.**—Individuals required under the Ethics in Government Act of 1978 or the Senate Rules to file financial disclosure reports with the Secretary of the Senate or the Clerk of the House shall file reports electronically using the systems developed by the Secretary of the Senate, the Sergeant at Arms of the Senate, and the Clerk of the House.

(5) **EXTENSIONS.**—The existing protocol allowing for extension requests for financial disclosures shall be retained for purposes of this subsection. Notices of extension for financial disclosure shall be made available electronically under this subsection along with its related disclosure.

(6) **ADDITIONAL TIME.**—The requirements of this subsection may be implemented after

the date provided in paragraph (1) if the Secretary of the Senate or the Clerk of the House identify in writing to relevant congressional committees an additional amount of time needed.

(c) **RECORDKEEPING.**—Section 105(d) of the Ethics in Government Act of 1978 is amended to read as follows:

“(d)(1) Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title shall be retained by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be.

“(2) Such report shall be made available to the public—

“(A) in the case of a Member of Congress until a date that is 6 years from the date the individual ceases to be a Member of Congress; and

“(B) in the case of all other reports filed pursuant to this title, for a period of six years after receipt of the report.

“(3) After the relevant time period identified under paragraph (2), the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed 1 year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation or inquiry.”.

SEC. 9. OTHER FEDERAL OFFICIALS.

(a) **PROHIBITION OF THE USE OF NONPUBLIC INFORMATION FOR PRIVATE PROFIT.**—

(1) **EXECUTIVE BRANCH EMPLOYEES.**—The Office of Government Ethics shall issue such interpretive guidance of the relevant Federal ethics statutes and regulations, including the Standards of Ethical Conduct for executive branch employees, related to use of non-public information, as necessary to clarify that no executive branch employee may use non-public information derived from such person's position as an executive branch employee or gained from the performance of such person's official responsibilities as a means for making a private profit.

(2) **JUDICIAL OFFICERS.**—The Judicial Conference of the United States shall issue such interpretive guidance of the relevant ethics rules applicable to Federal judges, including the Code of Conduct for United States Judges, as necessary to clarify that no judicial officer may use non-public information derived from such person's position as a judicial officer or gained from the performance of such person's official responsibilities as a means for making a private profit.

(b) **APPLICATION OF INSIDER TRADING LAWS.**—

(1) **AFFIRMATION OF NON-EXEMPTION.**—Executive branch employees and judicial officers are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

(2) **DUTY.**—

(A) **PURPOSE.**—The purpose of the amendment made by this paragraph is to affirm a duty arising from a relationship of trust and confidence owed by each executive branch employee and judicial officer.

(B) **AMENDMENT.**—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u-1), as amended by this Act, is amended by adding at the end the following:

“(h) **DUTY OF OTHER FEDERAL OFFICIALS.**—

“(1) **IN GENERAL.**—For purposes of the insider trading prohibitions arising under the

securities laws, including section 10(b), and Rule 10b-5 thereunder, each executive branch employee and each judicial officer owes a duty arising from a relationship of trust and confidence to the United States Government and the citizens of the United States with respect to material, nonpublic information derived from such person's position as an executive branch employee or judicial officer or gained from the performance of such person's official responsibilities.

“(2) **DEFINITIONS.**—In this subsection—

“(A) the term ‘executive branch employee’—

“(i) has the meaning given the term ‘employee’ under section 2105 of title 5, United States Code;

“(ii) includes—

“(I) the President;

“(II) the Vice President; and

“(III) an employee of the United States Postal Service or the Postal Regulatory Commission; and

“(B) the term ‘judicial officer’ has the meaning given that term under section 109(10) of the Ethics in Government Act of 1978.

“(3) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the Commission under those provisions.”.

SEC. 10. RULE OF CONSTRUCTION.

Nothing in this Act, the amendments made by this Act, or the interpretive guidance to be issued pursuant to sections 3 and 9 of this Act, shall be construed to—

(1) impair or limit the construction of the antifraud provisions of the securities laws or the Commodities Exchange Act or the authority of the Securities and Exchange Commission or the Commodity Futures Trading Commission under those provisions;

(2) be in derogation of the obligations, duties and functions of a Member of Congress, an employee of Congress, an executive branch employee or a judicial officer, arising from such person's official position; or

(3) be in derogation of existing laws, regulations or ethical obligations governing Members of Congress, employees of Congress, executive branch employees or judicial officers.

SA 1471. Mr. McCAIN (for himself, Mr. ROCKEFELLER, Mr. ENZI, Mrs. MCCASKILL, Mr. JOHANNES, Mr. BARRASSO, Mr. BLUNT, and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using non-public information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. —. LIMITATION ON BONUSES TO EXECUTIVES OF FANNIE MAE AND FREDDIE MAC.

Notwithstanding any other provision in law, senior executives at the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are prohibited from receiving bonuses during any period of conservatorship for those entities on or after the date of enactment of this Act.

SA 1472. Mr. TOOMEY (for himself, Mrs. MCCASKILL, Mr. DEMINT, Mr. UDALL of Colorado, Mr. RUBIO, Ms. AYOTTE, Mr. PORTMAN, Mr. THUNE, and Mr. JOHANNES) submitted an amendment

intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . EARMARK ELIMINATION ACT OF 2012.

(a) **SHORT TITLE.**—This Act may be cited as the “Earmark Elimination Act of 2011”.

(b) **PROHIBITION ON EARMARKS.**—

(1) **BILLS AND JOINT RESOLUTIONS, AMENDMENTS, AMENDMENTS BETWEEN THE HOUSES, AND CONFERENCE REPORTS.**—

(A) **IN GENERAL.**—It shall not be in order in the Senate to consider a bill or resolution introduced in the Senate or the House of Representatives, amendment, amendment between the Houses, or conference report that includes an earmark.

(B) **PROCEDURE.**—Upon a point of order being made by any Senator pursuant to subparagraph (A) against an earmark, and such point of order being sustained, such earmark shall be deemed stricken.

(2) **CONFERENCE REPORT AND AMENDMENT BETWEEN THE HOUSES PROCEDURE.**—When the Senate is considering a conference report on, or an amendment between the Houses, upon a point of order being made by any Senator pursuant to paragraph (1), and such point of order being sustained, such material contained in such conference report shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable under the same conditions as was the conference report. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(3) **WAIVER.**—Any Senator may move to waive any or all points of order under this section by an affirmative vote of two-thirds of the Members, duly chosen and sworn.

(4) **DEFINITIONS.**—

(A) **EARMARK.**—For the purpose of this section, the term “earmark” means a provision or report language included primarily at the request of a Senator or Member of the House of Representatives as certified under paragraph 1(a)(1) of rule XLIV of the Standing Rules of the Senate—

(i) providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process;

(ii) that—

(I) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and

(II) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or

(iii) modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

(B) **DETERMINATION BY THE SENATE.**—In the event the Chair is unable to ascertain whether or not the offending provision constitutes an earmark as defined in this subsection, the question of whether the provision constitutes an earmark shall be submitted to the Senate and be decided without debate by an affirmative vote of two-thirds of the Members, duly chosen and sworn.

(5) **APPLICATION.**—This section shall not apply to any authorization of appropriations to a Federal entity if such authorization is not specifically targeted to a State, locality or congressional district.

SA 1473. Mr. COBURN (for himself, Mr. UDALL of Colorado, Mr. MCCAIN, Mr. BURR, Mrs. MCCASKILL, and Mr. PAUL) submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . PREVENTING DUPLICATIVE AND OVERLAPPING GOVERNMENT PROGRAMS.

(a) **SHORT TITLE.**—This section may be cited as the “Preventing Duplicative and Overlapping Government Programs Act”.

(b) **REPORTED LEGISLATION.**—Paragraph 11 of rule XXVI of the Standing Rules of the Senate is amended—

(1) in subparagraph (c), by striking “and (b)” and inserting “(b), and (c)”;

(2) by redesignating subparagraph (c) and subparagraph (d); and

(3) by inserting after subparagraph (b) the following:

“(c) The report accompanying each bill or joint resolution of a public character reported by any committee (including the Committee on Appropriations and the Committee on the Budget) shall contain—

“(1) an analysis by the Congressional Research Service to determine if the bill or joint resolution creates any new Federal program, office, or initiative that would duplicate or overlap any existing Federal program, office, or initiative with similar mission, purpose, goals, or activities along with a listing of all of the overlapping or duplicative Federal program or programs, office or offices, or initiative or initiatives; and

“(2) an explanation provided by the committee as to why the creation of each new program, office, or initiative is necessary if a similar program or programs, office or offices, or initiative or initiatives already exist.”.

(c) **SENATE.**—Rule XVII of the Standing Rules of the Senate is amended by inserting at the end thereof the following:

“6. (a) It shall not be in order in the Senate to proceed to any bill or joint resolution unless the committee of jurisdiction has prepared and posted on the committee website an overlapping and duplicative programs analysis and explanation for the bill or joint resolution as described in subparagraph (b) prior to proceeding.

“(b) The analysis and explanation required by this subparagraph shall contain—

“(1) an analysis by the Congressional Research Service to determine if the bill or joint resolution creates any new Federal program, office, or initiative that would duplicate or overlap any existing Federal program, office, or initiative with similar mission, purpose, goals, or activities along with a listing of all of the overlapping or duplicative

Federal program or programs, office or offices, or initiative or initiatives; and

“(2) an explanation provided by the committee as to why the creation of each new program, office, or initiative is necessary if a similar program or programs, office or offices, or initiative or initiatives already exist.

“(c) This paragraph may be waived by joint agreement of the Majority Leader and the Minority Leader of the Senate upon their certification that such waiver is necessary as a result of—

“(1) a significant disruption to Senate facilities or to the availability of the Internet; or

“(2) an emergency as determined by the leaders.”.

SA 1474. Mr. COBURN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . AVAILABILITY OF LEGISLATION IN THE HOUSE AND SENATE.

(a) **IN GENERAL.**—It shall not be in order in the Senate or the House of Representatives to proceed to any legislative matter unless the legislative matter has been publically available on the Internet as provided in subsection (b) in searchable form 72 hours (excluding Saturdays, Sundays and holidays except when the Senate or the House of Representatives is in session on such a day) prior to proceeding.

(b) **AVAILABILITY.**—With respect to the requirements of subsection (a), the legislative matter shall be available on the official website of the committee with jurisdiction over the subject matter of the legislative matter.

(c) **WAIVER AND SUSPENSION.**—

(1) **IN THE SENATE.**—The provisions of this section may be waived in the Senate only by the affirmative vote of two-thirds of the Members, duly chosen and sworn.

(2) **IN THE HOUSE.**—The provisions of this section may be waived in the House of Representatives only by a rule or order proposing only to waive such provisions by an affirmative vote of two-thirds of the Members, duly chosen and sworn.

(3) **POINT OF ORDER PROTECTION.**—In the House of Representatives, it shall not be in order to consider a rule or order that waives the application of paragraph (2).

(4) **MOTION TO SUSPEND.**—It shall not be in order for the Speaker to entertain a motion to suspend the application of this section under clause 1 of rule XV of the Rules of the House of Representatives.

(d) **LEGISLATIVE MATTER.**—In this section, the term “legislative matter” means any bill, joint resolution, concurrent resolution, conference report, or substitute amendment.

SA 1475. Mr. COBURN (for himself, Mr. MCCAIN, and Mr. JOHNSON, of Wisconsin) submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . PERMANENT PROHIBITION ON CONGRESSIONAL EARMARKS.

(a) **BILLS AND JOINT RESOLUTIONS.—**

(1) **POINT OF ORDER.**—It shall not be in order to—

(A) consider a bill or joint resolution reported by any committee that includes an earmark, limited tax benefit, or limited tariff benefit; or

(B) a Senate bill or joint resolution not reported by committee that includes an earmark, limited tax benefit, or limited tariff benefit.

(2) **RETURN TO THE CALENDAR.**—If a point of order is sustained under this subsection, the bill or joint resolution shall be returned to the calendar until compliance with this subsection has been achieved.

(b) **CONFERENCE REPORT.—**

(1) **POINT OF ORDER.**—It shall not be in order to vote on the adoption of a report of a committee of conference if the report includes an earmark, limited tax benefit, or limited tariff benefit.

(2) **RETURN TO THE CALENDAR.**—If a point of order is sustained under this subsection, the conference report shall be returned to the calendar.

(c) **FLOOR AMENDMENT.**—It shall not be in order to consider an amendment to a bill or joint resolution if the amendment contains an earmark, limited tax benefit, or limited tariff benefit.

(d) **AMENDMENT BETWEEN THE HOUSES.—**

(1) **IN GENERAL.**—It shall not be in order to consider an amendment between the Houses if that amendment includes an earmark, limited tax benefit, or limited tariff benefit.

(2) **RETURN TO THE CALENDAR.**—If a point of order is sustained under this subsection, the amendment between the Houses shall be returned to the calendar until compliance with this subsection has been achieved.

(e) **WAIVER.**—Any Senator may move to waive any or all points of order under this section by an affirmative vote of two-thirds of the Members, duly chosen and sworn.

(f) **DEFINITIONS.**—For the purpose of this section—

(1) the term “earmark” means a provision or report language included primarily at the request of a Senator or Member of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process;

(2) the term “limited tax benefit” means any revenue provision that—

(A) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and

(B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; and

(3) the term “limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

SA 1476. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. MEMBER CERTIFICATION.

Section 102(a) of the Ethics in Government Act of 1978 is amended by inserting at the end the following:

“(9)(A) A statement (as provided in subparagraph (B)) certifying that financial transactions included in the report filed pursuant to section 101 (d) and (e) were not made on the basis of non-public information.

“(B) The certification required by this paragraph is as follows: ‘I hereby certify that the financial transactions reflected in this disclosure form were not made on the basis of material, non-public information.’”.

NOTICE OF INTENT TO SUSPEND THE RULES

Mr. COBURN. Mr. President, I submit the following notice in writing: In accordance with rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to offer an amendment to the Standing Rules of the Senate, by proposing Amendment No. 1473 to S. 2038.

PRIVILEGES OF THE FLOOR

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that Hala Furst, a Presidential Management Fellow on detail to the Homeland Security and Governmental Affairs Committee, be granted the privilege of the floor for the duration of the debate on S. 2038.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. TESTER. Mr. President, I ask unanimous consent that Val Molaison, a fellow in my office, be granted the privilege of the floor today.

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

BORDER TUNNEL PREVENTION ACT OF 2011

Mr. BROWN of Ohio. Madam President, I ask unanimous consent that the Senate proceed to Calendar No. 260, S. 1236.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1236) to reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

There being no objection, the Senate proceeded to consider the bill.

Mr. BROWN of Ohio. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The bill (S. 1236) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1236

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Border Tunnel Prevention Act of 2011”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) As the international border between the United States and Mexico becomes more secure, trafficking and smuggling organizations intensify their efforts to enter the United States by increasing the number of tunnels and other subterranean passages between Mexico and the United States.

(2) Border tunnels are most often used to transport narcotics from Mexico to the United States, but can also be used to transport people and other contraband.

(3) Between May 1990 and May 2011, law enforcement authorities discovered 137 tunnels, 125 of which have been discovered since September 2001. While law enforcement authorities discovered only 2 tunnels in California between 1990 and 2001, there has been a dramatic increase in the number of border tunnels discovered in California since 2001.

(4) Section 551 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109-295) added a new section to title 18, United States Code (18 U.S.C. 555), which—

(A) criminalizes the construction or financing of an unauthorized tunnel or subterranean passage across an international border into the United States; and

(B) prohibits any person from recklessly permitting others to construct or use an unauthorized tunnel or subterranean passage on the person’s land.

(5) Any person convicted of using a tunnel or subterranean passage to smuggle aliens, weapons, drugs, terrorists, or illegal goods is subject to an enhanced sentence for the underlying offense. Additional sentence enhancements would further deter tunnel activities and increase prosecutorial options.

SEC. 3. DEFINITIONS.

In this Act:

(1) **NATIONAL SECURITY ZONE.**—The term “national security zone” means any Southwest Border land designated by the Secretary as being at a high risk for border tunnel activity, as authorized under section 8(b).

(2) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(3) **SOUTHWEST BORDER LAND.**—The term “Southwest Border land” means all parcels of real property in the United States that—

(A) are located within 1 mile of the international border between the United States and Mexico; and

(B) are not owned by a Federal, State, tribal, or local government entity.

SEC. 4. ATTEMPT OR CONSPIRACY TO USE, CONSTRUCT, OR FINANCE A BORDER TUNNEL.

Section 555 of title 18, United States Code, is amended by adding at the end the following:

“(d) Any person who attempts or conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”.

SEC. 5. AUTHORIZATION FOR INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS.

Section 2516(1)(c) of title 18, United States Code, is amended by inserting “, section 555 (relating to construction or use of international border tunnels)” before the semicolon at the end.

SEC. 6. FORFEITURE.

(a) **CRIMINAL FORFEITURE.**—Section 982(a)(2)(B) of title 18, United States Code, is amended by inserting “555,” after “545.”.

(b) **CIVIL ASSET FORFEITURE.**—Any merchandise introduced into the United States