As such, I think we should vote against this legislation, and that we should in fact try again and get it right. That is why the head of the Securities Exchange Commission opposes this, and the state securities regulators, and former heads of the Securities Exchange Commission, and the Council of Institutional Investors, and many others.

We are opening up vast loopholes in our securities laws without adequate disclosure for investors. I think we will regret this vote.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Madam President, I claim the time in support of the legislation.

I suggest that we are on the verge of doing something very constructive for our economy, for small businesses, and for job growth, and it might be one of the most constructive things we are going to do this year in that area.

This legislation makes it easier and more affordable for young and growing companies to go public, to raise the capital they need to grow, to hire more workers. It also actually makes it easier for those who want to remain private and to attract more investors, and to do so without triggering the very onerous and expensive regulations attendant to being a public company.

This is going to create more jobs and more growth in the economy. That is why it passed the House with a vote of 390 to 23. That is why the President of the United States has endorsed this bill and said he will sign it into law. That is why there are dozens and dozens of organizations and groups and companies and trade associations that support this legislation, so that we can do something right here, right now, today, that the President will sign into law, which will help small and growing companies raise the capital they need to grow.

I urge my colleagues to vote yes.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass?

Mr. INHOFE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Illinois (Mr. KIRK).

The PRESIDING OFFICER (Mrs. MCCASKILL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 26, as follows:

[Rollcall Vote No. 55 Leg.]

YEAS—73

Alexander	Blunt	Carper
Ayotte	Boozman	Casey
Barrasso	Brown (MA)	Chambliss
Bennet	Burr	Coats
Bingaman	Cantwell	Coburn
Cochran	Johnson (WI)	Reid
Collins	Kerry	Risch
Coons	Klobuchar	Roberts
Corker	Kohl	Rubio
Cornyn	Kyl	Schumer
Crapo	Lee	Sessions
DeMint	Lieberman	Shaheen
Enzi	Lugar	Shelby
Graham	Manchin	Snowe
Grassley	McCain	Stabenow
Hagan	McCaskill	Tester
Hatch	McConnell	Thune
Heller	Menendez	Toomey
Hoeven	Moran	Udall (CO)
Hutchison	Murkowski	Vitter
Inhofe	Nelson (NE)	Warner
Inouye	Nelson (FL)	Wicker
Isakson	Paul	Wyden
Johanns	Portman	
Johnson (SD)	Pryor	

NAYS—26

Akaka	Feinstein	Mikulski
Baucus	Franken	Murray
Begich	Gillibrand	Reed
Blumenthal	Harkin	Rockefeller
Boxer	Landrieu	Sanders
Brown (OH)	Lautenberg	Udall (NM)
Cardin	Leahy	Webb
Conrad	Levin	Whitehouse
Durbin	Merkley	

NOT VOTING—1

Kirk

The bill (H.R. 3606), as amended, was passed.

STOP TRADING ON CONGRESSIONAL KNOWLEDGE ACT OF 2012

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to concur in the House amendment to S. 2038, which the clerk will report.

The legislative clerk read as follows:

Motion to concur in the House amendment to S. 2038, an original bill 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.

The PRESIDING OFFICER. Under the previous order, there will be 4 minutes of debate, equally divided in the usual form.

Mr. LIEBERMAN. I thank the Chair. I urge my colleagues on both sides of the aisle to support this bipartisan and now bicameral congressional ethics measure. This started as a response to stories and allegations that Members of Congress would not be held liable for insider trading. It then developed into what I think is the most significant congressional ethics legislation we have adopted in at least 5 years. It has been in a lot of other public disclosure and good government measures.

I wish to give particular thanks to Senator KIRSTEN GILLIBRAND and SCOTT BROWN, who led the effort and took the initiative that got this ball rolling.

I yield the rest of my time to Senator GILLIBRAND.

Mrs. GILLIBRAND. I thank the Chairman.

We are certainly taking a significant step forward, on behalf of the American people, toward restoring some faith our country has in their government. I wish to thank Leader REID for his leadership, Chairman LIEBERMAN, Ranking Member COLLINS, Senator BROWN, and all our colleagues on both sides of the aisle who worked so hard to pass this legislation.

I wish to thank my colleague from New York, LOUISE SLAUGHTER, who fought so hard and so long toward this effort.

This legislation was a rare instance where 96 Senators came together to deliver results for the American people. We passed a strong bill with teeth that will clearly and expressly make it illegal for Members of Congress, their staff, and their families to gain personal profits from nonpublic information gained through their service.

I strongly believe we have to make it clear no one is above the law and that Members of Congress need to play by the exact same rules as every other American. It is simply the right thing to do.

This is a commonsense bill and Americans can be assured our only interest is in their interest. When President Obama signs the STOCK Act, we will have begun to restore the public's faith in Washington.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Maine.

Ms. COLLINS. Madam President, I ask that I be notified after 1 minute.

The PRESIDING OFFICER. The Senator will be notified.

Ms. COLLINS. Mr. President, I rise to speak in favor of the STOCK Act, which we will be voting on very shortly. This legislation is based on a bill that was first introduced in the Senate last fall by Senator SCOTT BROWN, and a similar one introduced by Senator GILLIBRAND. I wish to commend them both for their work on this legislation. As a cosponsor of Senator BROWN's bill, I especially want to recognize his leadership on this issue.

I also wish to recognize Chairman LIEBERMAN for all the work he has done in moving this important bill through our committee, through a robust debate here on the Senate floor, and to final passage today.

Last fall, press reports on ''60 Minutes'' and elsewhere raised the question of whether lawmakers are exempt, either legally or practically, from the insider trading laws.

The STOCK Act is intended to affirm that Members of Congress are not exempt from our laws prohibiting insider trading. As we saw when we first considered this legislation, despite reassurances from legal experts and the SEC that no so such exemption exists, there has been persistent disagreement about the issue. That's why we feel it is important to send a very clear message that Members of Congress are not exempt from the insider trading laws, and that is exactly what this bill does.

Last month the Senate passed its version of the STOCK Act by an overwhelming bipartisan margin of 96 to 3. That bill had, at its heart, the affirmation of a duty arising from the relationship of trust and confidence already owed by Members and their staff

to the Congress, the U.S. Government, and the citizens we serve.

As I explained when we considered the Senate version, this is not a new fiduciary duty, in the traditional sense, but the recognition of an existing duty. The bill we passed also affirmed that the employees of the executive and judicial branches owe a similar duty, and must also comply with the insider trading laws.

There are differences, of course, between the bill we passed last month and the House version before us today. I believe we could have quickly resolved those differences in conference, and would have preferred that route. Still, this is a strong bill that has received overwhelming bipartisan support. It preserves the core of the bill passed by the Senate: to make absolutely clear that elective office is a place for public service, not for private gain. Underscoring that important message is the chief purpose of the STOCK Act, and that is why I support it.

The PRESIDING OFFICER. The Senator has 1 minute.

Ms. COLLINS. We need to send a strong message that elective office is the place for public service and not private gain.

Mr. LEAHY. Mr. President, I, again, filed a carefully drafted version of the bipartisan Public Corruption Prosecution Improvements Act as an amendment to the STOCK Act. Despite near unanimous approval for this amendment just a few short weeks ago, there was an objection by the House Republican leadership to the anti-corruption measure and Senate Republicans objected to going to conference to restore this important anti-corruption provision which had been stripped out of the bill. I am deeply disappointed that the Senate is taking up the House version of the bill that stripped out our bipartisan anti-corruption measure without consideration or a vote.

My amendment reflects a bipartisan, bicameral agreement and would strengthen and clarify key aspects of Federal criminal law to help investigators and prosecutors attack public corruption Nationwide. The House stripped this amendment from the STOCK Act after a flurry of misinformation about what the amendment actually does. Senator CORNYN and I took concerns very seriously and addressed them effectively when we drafted the amendment. The amendment I seek to offer includes a further belt-and-suspenders modification to address any legitimate concern. It is carefully and narrowly drawn and will only reach clearly corrupt conduct.

The Senate Judiciary Committee has now reported the Public Corruption Prosecution Improvements Act with bipartisan support in three successive Congresses and it has passed the Senate by voice vote. The House Judiciary Committee reported a companion bill unanimously. It is past time for Congress to act to pass serious anticorruption legislation. That is what the Public Corruption Prosecution Improvements Act amendment would be.

Public corruption erodes the trust the American people have in those who are given the privilege of public service. Loopholes in existing laws have meant that corrupt conduct goes unchecked. The stain of corruption has spread to all levels of government and victimizes every American by chipping away at the foundations of our democracy. My amendment would help us to take real steps to restore confidence in government by rooting out criminal corruption.

In Skilling v. United States, the Supreme Court sided with a former executive from Enron and greatly narrowed the honest services fraud statute, a law that had been appropriately used for decades as a crucial weapon to combat public corruption and self-dealing. The Court's decision leaves open the opportunity for State and Federal public officials to secretly act in their own financial self-interest, rather than in the interest of the public. This amendment, in a precise manner without ambiguity, closes this gaping hole in our anticorruption laws.

If we are serious about addressing the kinds of egregious misconduct we have seen too often in recent years, Congress should enact meaningful legislation to give law enforcement the tools necessary to enforce our anticorruption law. The STOCK Act is much less meaningful without this important, substantive reform. I am deeply disappointed that the Senate apparently will not take the opportunity to support taking these modest steps to bring those who undermine the public trust to justice.

Mr. LEVIN. Madam President, today the Senate has the opportunity to vote in support of the STOCK Act. If we vote for the House amendment to the Senate bill, we can send this legislation right to President Obama to be signed into law. That is exactly what we should do.

The lifeblood of our democratic government is the contract between the people and their elected representatives, a contract that must be based on trust that elected officials will act for the good of our Nation and in the interests of their constituents, and not for personal gain. To ensure that we maintain that trust, our Nation has laws and our Congress has rules that establish clearly the responsibilities of government officials, Members of Congress and their staffs and provide for the enforcement of violations.

The legislation before us is, in a way, preventative maintenance to protect that trust. It is a tightening up of our legal and ethical guidelines as part of what must be a constant effort to assure that the interests of our Nation and our constituents come first. Our constituents must have confidence that Members of Congress and our staffs will not use our positions for our personal financial benefit.

To be clear, as it stands now, it is a violation of the trust our constituents place in us, a violation of the democratic process, a violation of the securities laws, and a violation of congressional ethics rules for Members of Congress or their employees to engage in insider trading—the use of information not available to the public to make investment decisions. But questions have been raised about insider trading by Members of Congress. The legislation before us today is designed to ensure that those questions are answered. It removes any doubt that insider trading by Members and employees of Congress is against the law and against Congressional rules. It is important to remove that doubt because any appearance of a breach in trust between Congress and our constituents is corrosive to honest, open and effective government.

Back in December, the Homeland Security & Governmental Affairs Committee, of which I am a member, held extensive discussions on the need to preserve that trust, including a very productive hearing on December 1. Later in December, our committee held a markup and approved the Stop Trading on Congressional Knowledge Act, or STOCK Act. I want to commend our chairman, Senator LIEBERMAN, and our ranking member, Senator COLLINS, for their leadership, and the many members of the committee, Democratic and Republican, who made contributions to that process.

Two things became clear during our hearings and our markup. The first is that there was consensus that we should remove any uncertainty about the prohibition against insider trading. The second thing that became clear was significant bipartisan desire to avoid any unintended consequences as we sought to remove any uncertainty. We reported out the legislation because of widespread agreement on our goals, but there remained concerns about the means, and it was understood that we would attempt to address those concerns before the bill came to the floor.

And so a number of us worked in the weeks after the markup to make sure that our goals and our means were in concert. We met that objective, and our consensus was reflected in the language of the bill that passed the Senate by a vote of 96 to 3. The House amendment before us today retains the key language from the Senate bill that Senator LIEBERMAN, Senator COLLINS and I, among others, worked so hard to get right. While some provisions that I supported have been removed by the House amendment, the central purpose of this bill remains the same. The House amendment, like the Senate bill it replaces, removes any uncertainty over the prohibition on insider trading, and it avoids unintended harmful consequences that concerned some of us.

I would now like to discuss two critical provisions in the bill before us today. The first reassures the American people that there are no barriers to prosecuting Members and employees

of Congress for insider trading. It does so through language establishing that Members and employees of Congress have a duty arising from ''a relationship of trust and confidence'' with the Congress, the government, and most importantly, with the American people. Establishing such a duty removes any doubt as to whether insider trading prohibitions apply to Congress. It is also important that the bill's language makes clear that in offering this new language it does not in any way prevent enforcement of the anti-insider trading provisions contained in current law. Again, I am confident that under current law, Members of Congress and our staffs are prohibited from insider trading. This bill will ensure that the current prohibition is unambiguous, and thereby strengthened.

The second major provision of the legislation instructs the Ethics Committees of both chambers to issue clear guidance to members and staffs regarding the prohibition on profiting from inside information. This guidance will clarify that existing rules in both chambers relative to gifts and conflicts of interest also prohibit the use of nonpublic information gained in the conduct of official duties for private profit.

Let me briefly mention one other provision, unrelated to insider trading but nonetheless an important step forward in terms of gaining the confidence of our constituents. As one of the originators of the Lobbying Disclosure Act of 1995, I am well aware of the value of transparency in government. The bill before us improves congressional transparency by requiring that personal financial disclosure filings required of members and certain staff are made available electronically to the public. But because this bill also significantly expands the number of officials required to file public disclosures, including law enforcement, military, and intelligence officers, it is critical that this provision be implemented in a way that is consistent with our national security interests. Care should be taken to ensure that public filers are not made unnecessarily vulnerable to malicious use of personal information.

The House amendment also removes a provision of the Senate bill that would have required political intelligence consultants to register in a way similar to how lobbyists are required to register currently. Instead, the House amendment, like the version of the Senate bill that was reported by the Homeland Security and Governmental Affairs Committee, requires the Comptroller General of the United States to study the role of political intelligence in financial markets and report back to Congress. It is corrosive of open government for political intelligence consultants to sell their access to officials. Before Congress acts to address this issue, we must learn more about it, which is why I support this study. I look forward to working with my colleagues to address this issue once we have the benefit of the Comptroller's report.

In addition to the insider trading and disclosure provisions, this bill contains numerous other important improvements to our ethics laws. I urge my colleagues to join together today, to pass this legislation and send it to President Obama for his signature.

I ask unanimous consent that my statement appear in the RECORD at the appropriate place before the vote on the STOCK Act.

CLOTURE MOTION ON THE STOCK ACT, S. 2038

Mr. LIEBERMAN. Madam President, I rise today to support cloture on the motion to concur in the House amendment to the ''Stop Trading on Congressional Knowledge Act,'' the ''STOCK Act''—S. 2038.

We have come a long way in a short time in a bipartisan fashion on this bill, which does many good things.

I want to start by thanking my colleagues, Ranking member COLLINS and Senators GILLIBRAND and BROWN for all their work on this bill.

And I want to thank Majority Leader REID for making the STOCK Act the first bill the Senate debated after the winter recess.

Mr. President, this problem received a jolt of momentum late last year when ''60 Minutes'' aired allegations that some Members of Congress and their staffs used information gained on their jobs to enrich themselves with time-sensitive investments in the stock market and nothing could be done because Congress had exempted itself from insider trading laws.

We took the issue up at a hearing of the Homeland Security and Governmental Affairs Committee in December and established that the charge that Congress had exempted itself from insider trading laws was just not true. However, it was also clear that existing laws needed to be clarified.

At our committee hearing, several securities law experts told us that there was ambiguity in the law and they could not be sure how a court would rule if there was a challenge to the SEC's authority to bring an insider trading case against a Member of Congress.

That is because, as the experts explained, a person may be found to have violated the insider trading laws only if he or she breaks a fiduciary duty, a duty of trust and confidence owed to somebody—to the shareholders of the company, or to the source of the nonpublic information, for example.

The experts told us that it is possible that a judge looking at existing case law might conclude that Members of Congress owe no duty to anyone with respect to the nonpublic information they receive while carrying out their duties. Now, if I were a judge, I would not see it that way. It seems self-evident that public office is a public trust, and that Members of Congress have a duty to the institution of Congress, to the government as a whole, and to the American people not to use information gained during their time in Congress—and unavailable to the public—to make investments for personal profit.

But the fact is that there are some very smart legal experts who are concerned that a judge would not see it that way. And this lack of clarity could in fact shield a Member of Congress from prosecution for insider trading.

The STOCK Act clarifies this ambiguity in the Security Exchange Act of 1934 by explicitly stating that Members of Congress and our staffs have a duty of trust to the institution of Congress, to the U.S. Government, and to the American people—a duty that Members of Congress violate if they trade on non-public information they gain by virtue of their position.

The bill also requires the Ethics Committees of both houses of Congress to issue guidance to clarify that Members and staff may not use non-public information derived from their position in Congress to make a private profit.

Besides these changes aimed at insider trading, the STOCK Act includes other significant Congressional ethics legislation. For example, it requires Members of Congress and their staffs to file public reports on their purchases or sale of stocks, bonds, commodities futures or other financial transactions exceeding $1,000 within 30 days of the transaction. Currently these trades are reported once a year. Timelier reporting will allow the SEC and the public to assess whether there is anything suspicious about the timing of the trade.

The bill also contains important language that requires financial disclosure forms filed by Members and staff be filed electronically and—perhaps even more significantly—be available online for public review.

There really is no sensible reason to make someone come physically into the House or Senate to see a copy of one of these financial disclosure forms, which are public records.

The bill will also require the Government Accountability Office to study and report back to Congress on so-called ''political intelligence'' consultants who sell information derived from government officials to investors.

The STOCK Act also contains several provisions that were added in the Senate or House to strengthen the bill, including language offered by Senator BLUMENTHAL related to the denial of Congressional benefits to Members who commit public corruption crimes; language offered by Senator BOXER that will, for the first time, require Members of Congress and senior Executive Branch officials to disclose their mortgages on their annual financial disclosure forms; and language offered by Senator MCCAIN to prohibit executives of Fannie Mae and Freddie Mac from receiving bonuses while the firms remain in federal conservatorship.

This is a very strong bill, in fact, the strongest Congressional ethics reform

bill that has been passed by Congress since we passed the Honest Leadership and Open Government Act in 2007.

This bill was reported as an original bill out of the Committee on Homeland Security and Governmental Affairs on December 13 by a vote of 7 to 2. Then, after thorough debate on the Senate floor, including the consideration of 20 amendments, the bill passed the Senate on Feb. 2 by a vote of 96 to 3.

The bill was sent to the House, which moved quickly and approved the STOCK Act just a week later by a lopsided majority of 417 to 2.

This is Congress at its best. A problem was identified that cut directly to the public's faith in this institution and we dealt with it quickly and on a bipartisan basis in both Houses.

This should not only be applauded but serve as a model as we take up other crucial legislation, such as Postal reform and cybersecurity. This shows we can work together rather than engage in a perpetual partisan tug of war.

Mr. President, in his farewell address to the Nation, President Washington said that ''virtue or morality is a necessary spring of popular government'' and that we cannot ''look with indifference'' at anything that shakes that foundation.

The STOCK Act offers us a chance to restore trust in our elected government and to show those who, with their votes, gave us the honor of representing them here, that the only business we do here is the people's business.

DUTY PROVISIONS

Mr. REID. There are many important issues facing our country today and solutions will require bipartisan cooperation. The STOCK Act has enjoyed overwhelmingly bipartisan support because it addresses a key issue, namely government accountability to the American people.

Members of Congress and those we employ must be held accountable to the same standards and laws as the citizens we represent. We owe a duty of trust and loyalty to the American people to conduct our private lives with the highest integrity and to never abuse our office to gain unfair or unethical financial advantages. I am pleased that we have voted overwhelmingly to pass a bill that closes any loopholes, real or perceived, in this regard.

I would note specifically that the STOCK Act requires that Members of Congress and their staffs abstain from profiting on any nonpublic information derived from a person's position or gained in the performance of official responsibilities. The bill also makes absolutely clear that Members and staff 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.

However, and I think my distinguished colleague from Connecticut will agree, the STOCK Act should not be interpreted as limiting government transparency in any way. Discourse with the public, whether privately or publicly, is vital to maintaining a healthy democratic society.

Mr. LIEBERMAN. I thank the Senator from Nevada. I am happy about the reforms that Congress has adopted, and I agree that the STOCK Act is not intended to limit government transparency or hinder dissemination of information to interested parties regarding Congressional activities and deliberations.

In the interest of clarity for the record, I would like to state that the STOCK Act does not turn information regarding Congressional activities and deliberations that was previously not material, into material information with respect to securities laws. I would also note that a Member or employee of Congress who, in the course of performing their duties, has a nonpublic conversation with a citizen or constituent does not automatically violate the duty imposed by Section 4(b)(2) the STOCK Act.

Mr. REID. I thank the Senator from Connecticut for his comments. With regard to the Chairman's last remark, I would like to point out that my office has fielded concerns from multiple sources that the duty language may be interpreted by the SEC as creating liability for public officials and their staff when communicating privately with constituents. There is concern that a threat of this would have a significant chilling effect on government transparency. I understand however that in conversations with my leadership staff the SEC has explicitly clarified that it does not view the STOCK Act as creating new limitations on the disclosure of Congressional information in conversations with constituents. I also understand that leadership staff has been assured by the SEC that any case brought under the insider trading prohibitions would still require the SEC to prove that a Member of Congress or their staff acted with scienter, which means acting corruptly, knowingly, recklessly or in bad faith.

Mr. LIEBERMAN. The Democratic leader is correct. As the Director of Enforcement at the SEC, Robert Khuzami, stated in his testimony before the House Financial Services Committee: ''You have to be acting with corrupt intent, knowledge, or recklessness. If you act in good faith, you're not going to be guilty.'' My staff had detailed conversations with the SEC while drafting the duty provisions and raised these concerns specifically. Our goal in drafting the duty provisions of the STOCK act was to ensure that insider trading restrictions apply to government officials no differently than they do to the rest of the public, but at the same time, avoid unintended consequences that could curtail interaction between Congress and the public.

Mr. REID. Furthermore, it is my understanding that Section 11 of this bill is not intended to override the authority of the President to exempt from public availability the financial disclosure reports of individuals engaged in intelligence activities, which is contained in section 105(a)(1) of the Ethics in Government Act. As to the executive branch, section 105(a)(1) applies to all of the public availability requirements of this bill.

Mr. LIEBERMAN. That is correct. It is not the intent of the STOCK Act to override the President's authority for necessary exemptions for intelligence activities.

Ms. COLLINS. I yield the remainder of my time to Senator SCOTT BROWN.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. BROWN of Massachusetts. Madam President, today, we put America first and we passed a bipartisan and now bicameral bill the President will sign, and we took a step to ending the deficit of trust hurting our democracy. I wish to thank Senator GILLIBRAND and the leadership of Senator COLLINS and Senator LIEBERMAN for marking this up so quickly. Today is a good day.

The STOCK Act will affirm that Members of Congress are not above the law and will increase transparency by requiring Members of Congress and highly compensated Federal employees to disclose all their trading activity within 45 days. Today, America is a government by the people and for the people, and that means our elected officials must follow the same laws as everybody. We have taken a step toward reestablishing trust, and today we are one step closer to making every seat the people's seat.

I encourage everybody to support this passage.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant 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 motion to concur in the House amendment to S. 2038, the Stop Trading on Congressional Knowledge Act.

Harry Reid, Jeff Bingaman, Daniel K. Inouye, Joseph I. Lieberman, Tim Johnson, Daniel K. Akaka, Richard J. Durbin, Charles E. Schumer, John Barrasso, Scott P. Brown, Mitch McConnell, Jon Kyl, Richard C. Shelby, Rob Portman, John Cornyn, John Hoeven, Marco Rubio, Lisa Murkowski, Jeff Sessions, Mike Johanns, Tom Coburn, Susan M. Collins.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to concur on the House amendment to S. 2038, an act 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, 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 called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Illinois (Mr. KIRK).

The yeas and nays resulted—yeas 96, nays 3, as follows:

[Rollcall Vote No. 56 Leg.]

YEAS—96

Akaka	Gillibrand	Moran
Alexander	Graham	Murkowski
Ayotte	Hagan	Murray
Barrasso	Harkin	Nelson (NE)
Baucus	Hatch	Nelson (FL)
Begich	Heller	Paul
Bennet	Hoeven	Portman
Bingaman	Hutchison	Pryor
Blumenthal	Inhofe	Reed
Blunt	Inouye	Reid
Boozman	Isakson	Risch
Boxer	Johanns	Roberts
Brown (MA)	Johnson (SD)	Rockefeller
Brown (OH)	Johnson (WI)	Rubio
Cantwell	Kerry	Sanders
Cardin	Klobuchar	Schumer
Carper	Kohl	Sessions
Casey	Kyl	Shaheen
Chambliss	Landrieu	Shelby
Coats	Lautenberg	Snowe
Cochran	Leahy	Stabenow
Collins	Lee	Tester
Conrad	Levin	Thune
Coons	Lieberman	Toomey
Corker	Lugar	Udall (CO)
Cornyn	Manchin	Udall (NM)
Crapo	McCain	Vitter
DeMint	McCaskill	Warner
Durbin	McConnell	Webb
Enzi	Menendez	Whitehouse
Feinstein	Merkley	Wicker
Franken	Mikulski	Wyden

NAYS—3

Burr	Coburn	Grassley

NOT VOTING—1

Kirk

The PRESIDING OFFICER. On this vote, the yeas are 96, the nays are 3. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Cloture having been invoked, the motion to refer falls as inconsistent with cloture.

Under the previous order, all postcloture time is yielded back, the motion to concur in the House amendment with amendment No. 1940 is withdrawn, and the motion to concur in the House amendment is agreed to.

Under the previous order, the motion to reconsider is considered made and laid upon the table.

EXECUTIVE SESSION

NOMINATION OF DAVID NUFFER TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF UTAH

NOMINATION OF RONNIE ABRAMS TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

NOMINATION OF RUDOLPH CONTRERAS TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations which the clerk will report.

The bill clerk read the nominations of David Nuffer, of Utah, to be United States District Judge for the District of Utah; Ronnie Abrams, of New York, to be United States District Judge for the Southern District of New York; and Rudolph Contreras, of Virginia, to be United States District Judge for the District of Columbia.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided in the usual form.

The Senator from Vermont.

Mr. LEAHY. Madam President, the Senate is about to vote on the nomination of David Nuffer to fill a judicial emergency vacancy on the Federal trial court for Utah. This is not a nomination that should have been filibustered or required the filing of a cloture motion in order to be scheduled for consideration by the Senate. This is a nomination, reported unanimously by the Judiciary Committee over 5 months ago, that we should have voted on and confirmed last year.

Today's consideration was facilitated when the majority leader and the republican leader came to an understanding last week. With a judicial vacancies crisis that has lasted years, and nearly one in 10 judgeships across the Nation vacant, the Senate needs to work to reduce judicial vacancies significantly before the end of the year.

Unlike the nearly 60 district court nominees of President Bush who were confirmed within a week of being reported by the Judiciary Committee during President Bush's first term, qualified, consensus nominees to fill vacancies on our Federal courts have been needlessly stalled during President Obama's first term. The five-month delay in the consideration of Judge Nuffer is another example of the needless delays that were occasioned by Republicans' unwillingness to agree to schedule the nomination for a vote. The application of the ''new standard'' the junior Senator from Utah conceded Republicans are applying to President Obama's nominees continues to hurt the America people all over the country who are being forced to wait for judges to fill these important Federal trial court vacancies and hear their cases. Justice is being delayed for millions of Americans.

This nomination is one of the 20 circuit and district court nominations ready for Senate consideration and a final confirmation vote. They were all reported favorably by the Judiciary Committee after thorough review. All but a handful are by any measure consensus nominations, as is Judge Nuffer. There was never any good reason for the Senate not to proceed to votes on these nominations. It should not have taken cloture motions to get agreement to schedule votes on these qualified, consensus judicial nominations.

Judge Nuffer has been serving over the last 17 years as a magistrate judge for the very court to which he was nominated by the President. By any sensible standard he should be confirmed. No ''new standard'' should be used to oppose his confirmation. Like Judge Nuffer, the other nominees awaiting votes by the Senate are qualified judicial nominees. They are nominees whose judicial philosophy is well within the mainstream. These are all nominees supported by their home State Senators, both Republican and Democratic. The consequence of these months of delays is borne by the millions of Americans who live in districts and circuits with vacancies that could be filled as soon as Senate Republicans allow votes on the judicial nominations currently before the Senate awaiting their final consideration.

We must continue with the pattern set by last week's agreement. The Senate needs to make progress beyond the 14 nominations in that agreement and beyond the 20 nominations currently on the calendar. There are another eight judicial nominees who have had hearings and are working their way through the committee process. There was another needless delay when Republicans boycotted the Judiciary Committee meeting last week and prevented a quorum while insisting on a meeting to hold over nominees. We will overcome that and have those nominations before the Senate this spring.

I hope the committee will hold hearings on another 11 nominations in the next few weeks. One of those nominees, Robert Shelby, is to fill the other vacancy on the United States District Court for the District of Utah. Whether he is included depends in large measure on the Senators from Utah.

I have assiduously protected the rights of the minority in this process. I have only proceeded with judicial nominations supported by both home State Senators. That has meant that we are not able to proceed on current nominees from Arizona, Georgia, Nevada, Florida, Oklahoma and Utah. I even stopped proceedings on a circuit court nominee from Kansas when the Kansas Senators reversed themselves and withdrew their support for the nominee.

I have been discussing with the junior Senator from Utah whether he will