my liberal friends to take their arguments directly out of the far left environmental playbook. Get ready to see lots of pictures of babies and children using inhalers. But these are the same Members who voted against my Clear Skies bill, that would have given us a 70-percent reduction in real pollutants, I am talking about SOx, NO_X, and mercury. We had that bill up, and that was one that would have actually had that reduction—a greater reduction than any President has advocated. When President Obama spoke—at that time he was in the Senate—he said: I voted against the Clear Skies bill. In fact, I was the deciding vote, despite the fact that I am from a coal State and half my State thought I had thoroughly betrayed them because I thought clean air was critical and global warming was critical.

At an April 17 hearing this year, Senator BARRASSO and Brenda Archambo, of the Sturgeon for Tomorrow, who testified before the EPW Committee, ''Would Michigan lakes, sturgeon, sportsmen, families have been better off had those reductions already gone into effect when they had the opportunity to pass [Clear Skies]?''

Her answer was yes. We are talking about, by this time, 6 years from now, we would have been enjoying those reductions. There are crucial differences between Clear Skies and Utility MACT. Clear Skies would have reduced the emissions without harming jobs and our economy because it was based on a commonsense, market-based approach. It was designed to retain coal in American electricity generation while reducing emissions each year.

On the other hand, Utility MACT is specifically designed to kill coal as well as all the good-paying jobs that come with it. EPA itself admits the rule will cost $10 billion to implement, but $10 billion will yield $6 million in benefits. Wait a minute. That does not make sense. That is a cost-benefit ratio between $10 billion and $6 million of 1,600 to 1.

If their campaign is so focused on public health, why did Democrats oppose our commonsense clean air regulations? Very simple. Because we did not include CO_2 regulation in the Clear Skies legislation. President Obama's quote only verifies that. He is on record admitting he voted against these health benefits because regulating greenhouse gases, which have no effect whatsoever on public health, was more important. In other words, the real agenda is to kill coal.

Just before President Obama made the decision to halt the EPA's plan to tighten ozone regulations, the White House Chief of Staff Bill Daley asked: ''What are the health impacts of unemployment?'' That is one of the most important questions before this Senate in preparation for the vote on my resolution to stop Utility MACT. What are the health impacts on the children whose parents will lose their jobs due to President Obama's war on coal? What are the health impacts on children and low-income families whose parents will have less money to spend on their well-being when they have to put more and more of their paychecks into the skyrocketing electricity costs?

EPA Administrator Spalding gave us a clue about the impacts of unemployment. It would be, as he said, ''Painful. Painful every step of the way.'' Do my colleagues in the Senate truly want that? I deeply regret that I have to be critical of two of my best friends in the Senate, Senators ALEXANDER and PRYOR, particularly Senator PRYOR. Three of my kids went to school with him at the University of Arkansas. He is considered part of our family. He is my brother. But if someone has been to West Virginia and to Ohio and to Illinois, to Michigan, to Missouri, and the rest of the coal States, as I have, and personally visited with the proud fourth- and fifth-generation coal families, as I have and certainly the occupier of the chair has, they know they will lose their livelihood if Alexander-Pryor saves the EPA's effort to kill coal. I cannot stand by and idly allow that to happen.

Let me conclude by speaking to my friends in this body who have yet to make up their minds as to whether they will support my resolution. I know everyone in the Senate wants to ensure we continue to make the tremendous environmental progress we have made over the past few years. We truly have.

The Clean Air Act many years ago cleaned up the air. We have had successes. Unfortunately, this administration's regulations are failing to strike that balance between growing our economy and improving our environment. Rather, this agenda is about killing our ability to run this machine called America.

Again, I wish to welcome the support of Senators MANCHIN and BEN NELSON, who listened to their constituents. It is the rest of the Senators from the coal States that I am concerned about. What about Senators LEVIN and STABENOW, who come from a State that uses coal for 60 percent of its electricity?

What about Senator CONRAD from a State with 85 percent of the electricity coming from coal? In Ohio, where Senator BROWN is from, 19,000 jobs depend on coal. Then there is Virginia, home of Senators WARNER and WEBB, which has 31,660 jobs, a 16 to 19 percent increase in the electric rates.

Arkansas, the war on coal there, that is 44.9 percent of electricity generation in the State of Arkansas; Tennessee, 52 percent of electricity generation, 6,000 jobs; Missouri, 81 percent of electricity generation—81 percent in the State of Missouri. That is 4,600 jobs at stake; Montana, 58 percent; Louisiana, that is 35 percent of electricity generation. These are all States that depend on coal for their electricity generation; lastly, Pennsylvania, 48.2 percent of electricity generation, 49,000 jobs would be lost in Pennsylvania if utility MACT is passed. That is significant. I would not be surprised if all these Senators from coal States that I just mentioned will vote for the bill of Senators ALEXANDER and PRYOR that says: Let's kill coal, but let's put it off for 6 years.

I repeat. It does not do any good to delay the death sentence on coal 6 years. Contracts will already be violated and the mines will be closed. So I say to my colleagues that their constituents will see right though those of who choose a cover vote. The American people are pretty smart. They know there is only one real solution to stop, not just delay, EPA's war on coal.

I hope they will join Senators MANCHIN and NELSON and me and several others and stand with the constituents, instead of President Obama and his EPA, which will make it painful every step of the way for them all. We need to pass S.J. Res. 37 and put an end to President Obama's war on coal. This is the last chance we have to do this. There is no other vote coming along.

If a Senator does not want to kill coal, they have to support S.J. Res. 37. It is our last chance to do it. Again, we do not know when this is going to come up. It is locked in a time limit, unless we, by unanimous consent, increase that time. I have no objection to putting it off until after the farm bill because that is a very important piece of legislation. So we will wait and see what takes place.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:28 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

EXECUTIVE SESSION

NOMINATION OF ANDREW DAVID HURWITZ TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—Continued

The PRESIDING OFFICER. The Senator from South Carolina.

SPENDING

Mr. DEMINT. Mr. President, I will speak for a few minutes on the farm bill, which we are debating this week.

Four years ago, President Obama was elected on the promise of change, the promise to cut the deficit in half in the first term, and to get unemployment, before the end of his first term, to a low of 6 percent. We all know what happened to those promises.

Two years ago, a wave of Republicans were elected with the promise of cutting spending, borrowing, and debt. Yet debt has continued to explode, as has spending. We were promised change,

but we got more of the status quo—a lot more of it. We got a lot more spending, borrowing, and debt—to the point where most Americans, at this point, are deeply concerned about the future of their country.

Americans are still demanding change, and for good reason. We must change the way business in Washington is done because we are nearly $16 trillion in debt. We talk about the debt all the time, and these numbers are facts. We are poised to spend nearly $1 trillion more on a massive farm bill that some people in Washington have the nerve to tell the American people saves money.

I want to talk a little bit about that because we obviously need to save money. But despite all the fuss about the need to cut spending, the debt ceiling debate, and the fact that we are actually cutting our military defenses to the bone because of our overspending in other areas, let's look at what we have done this year as a Senate. We passed a highway bill that spent $13 billion bailing out a highway trust fund because we spent too much there. We have spent another $140 billion in corporate welfare reauthorizing the Export-Import Bank. We passed an $11 billion Postal Service bailout. Now we are working on a $1 trillion farm bill.

No one here can bring up one bill where we have actually cut spending. Yet we know our country is going off a fiscal cliff. The farm bill supporters are telling us this bill saves money. Unfortunately, we are using the same smoke-and-mirror accounting that is often used in Washington—a lot of gimmicks that make it appear less expensive—and it is an affront to the American people who are demanding less spending and debt.

There is absolutely no connection between what some of my colleagues are telling their constituents back home and what they are doing in Washington as far as cutting spending. They talk about cutting spending, but now they want to pass this farm bill.

The farm bill we are debating today is projected by the CBO to cost about $1 trillion over the next 10 years. The last farm bill cost $600 billion. This is a 60-percent increase.

If we look at these numbers on the chart, you can understand the rest of the debate. The Congressional Research Service has confirmed these numbers. In 2008 we passed a farm bill that was projected to spend $604 billion over 10 years. The bill we are considering today is projected to spend nearly $1 trillion—$969 billion. Yet the folks who are speaking about the farm bill here are telling us this saves some $20 billion. Only in Washington could they look at you with a straight face and say this saves money.

Let's talk about how they actually get that figure.

In 2008 it was about $600 billion. This farm bill is about $1 trillion. What happened in the meantime was mostly the President's stimulus package, which spent about $1 trillion. It had a lot of money in it for food stamps. It was a short-term, temporary stimulus, supposedly with a lot of new money for food stamps.

Between 2008 and now, we have increased food stamp spending about 400 percent—400 percent. I think that number actually goes back to 2000. During periods of good economy and low unemployment, we increased food stamps, and we have continued to increase that dramatically over the last few years. There was supposed to have been a temporary increase in food stamps. We are actually locking in that spending permanently with this new farm bill. But since it is slightly lower than this temporary increase, the folks speaking to us today are saying: This is big savings, America. We are saving money on the farm bill. It is actually a 60-percent increase in the last farm bill.

There is only one question: Does this bill really save money? The answer is absolutely not. Instead of doing the reforms we need in the Food Stamp Program, which, frankly, is about 75 percent or more of this bill, we are passing a farm bill that locks in what is supposed to be a temporary spending level for food stamps over the next 5 years.

What is really in this farm bill? A lot of it is food stamps. There is some foreign aid. There are some things for climate change. There is housing and foreclosure. And there is broadband Internet. It is a catch-all for a lot of things. But in order for us to get what we need for the pharmaceutical industry in America, we have to agree to this huge additional increase in these other programs.

The stunning expansion in the Food Stamp Program is particularly concerning because more than one in seven Americans is now on the Food Stamp Program. The number of people on the program has increased by 70 percent since 2007 and 400 percent since 2000. This, again, was when our economy was good and unemployment was low. We were still increasing.

Unfortunately, many politicians are using the food stamps to buy votes. The small part of the bill that actually deals with farming replaces one form of corporate welfare for another. The bill eliminates the controversial direct payment system but replaces it with something that many consider far worse—a new program in this bill that is called agricultural risk coverage that promises farmers the government will pay for 90 percent of their expected profits if the market prices decline. Under this scheme, farmers will pay no attention to the laws of supply and demand because the government will guarantee their profits.

Americans want less spending and less debt. All the polls we have looked at—the National Journal poll that came out—said 74 percent of Americans believe the spending on food stamps should stay the same or decrease, and the spending on the farm bill, 56 percent say, should stay the same or decrease. Yet we are increasing it 60 percent.

It is hard to answer the question of why we continue to do this—continue to spend money, borrow money, and talk about the need to cut. Yet for one program after another we increase spending.

I oppose this bill for the reasons I have talked about. It spends $1 trillion. We need an open debate, which we are being told we are not going to have. We are not going to have all the amendments we are talking about, which we need to fix this program. So if the leader decides to limit the debate and limit the amendments, I will absolutely oppose this bill and do everything I can to stop it.

I plead with my colleagues to start telling Americans the truth. This farm bill increases spending. It doesn't save money. It adds to our debt. It locks in spending on a program we need to change, particularly for the beneficiaries of the Food Stamp Program who are not being helped. They are being trapped in a dependent relationship with government indefinitely instead of us doing what will actually help them get a job and improve their status in life.

I encourage my colleagues to oppose this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

NATIONAL SECURITY LEAKS

Mr. COATS. Mr. President, I rise today to discuss the issue of national security leaks.

A few weeks ago, the world learned that U.S. intelligence agencies and partners disrupted an al-Qaida plot to blow up a civilian aircraft. We are all very familiar with the success of this effort, and we applaud those involved in preventing a truly horrific terrorist attack.

However, my concern today, and has been since that time, is that the public has become too familiar with this successful operation. Specifically, due to an intelligence leak, the world learned of highly sensitive information, sources, and methods that enabled the United States and its allies to prevent al-Qaida from striking again.

This irresponsible leak jeopardizes future operations and future cooperation with valuable sources and intelligence partners overseas. The release of this information—intentional or not—puts American lives at risk as well as the lives of those who helped us in this operation.

Unfortunately, this is not the only recent leak to occur. As a member of the Senate Select Committee on Intelligence, I am deeply concerned about a troubling rash of leaks exposing classified intelligence information that has come out in the last several weeks. This paints a disturbing picture of this administration's judgment when it comes to national security.

There is a questionable collaboration with Hollywood, whereby the Obama

administration decided to give unprecedented access to filmmakers producing a movie on the bin Laden raid—including the confidential identity of one of our Nation's most elite warriors. Discussions with reporters in the aftermath of the raid also may have revealed the involvement of a Pakistani doctor, who was sentenced to 33 years in prison for treason after playing a critical role in the hunt for bin Laden.

The pages of our newspapers have highly classified information publicized pertaining to intelligence operations in Yemen and Iran—currently, the two most concerning foreign policy challenges this Nation faces. This is in addition to the frequency with which top administration officials now openly discuss the once highly classified execution of drone strikes. All too frequently we read in these publications that ''highly placed administration officials'' are the source of confirmation of previously classified information.

Sadly, these incidents are not the first time this Nation's secrets have spilled onto the streets or in the book stores. The problem stems in part from the media's insatiable desire for information that makes intelligence operations look a lot like something out of a Hollywood script. This media hunger is fed by inexcusable contributions from current and former government officials.

Mr. President, I want to repeat that last statement. This media hunger to publish classified information comes from the inexcusable contributions of current and former government officials. We now know that investigations by the FBI, CIA, and now two prosecutors are underway, but more must be done to prevent intelligence disclosures from occurring in the first place.

The question of whether the White House purposely leaked classified information, as the President refutes, is not my main point. Whether it was intentional has little bearing on the results. Highly classified information still got out, and it appears to have been enabled by interviews with senior administration officials.

At this time, I take the President at his word that the White House did not purposely leak classified information. But what about his administration leaking it accidentally or what about mistakenly or—and this is perhaps the best adjective that might apply—what about stupidly? There remain a lot of unanswered questions about the White House's judgment and whether the actions by this administration, intentional or not, enabled highly sensitive information to become public.

The House and Senate Intelligence Committees are working together in a nonpartisan fashion—let me emphasize that we are working together in a nonpartisan fashion—to address this issue. As a member of the committee, I am working with my colleagues to evaluate a range of reforms to reduce or hopefully eliminate the opportunity for future leaks. I wish to commend Chairman FEINSTEIN and Vice Chairman CHAMBLISS for their efforts and genuine interest in moving forward with this, and I thank them for their leadership on this matter. Our committee, working across the Capitol with the House Intelligence Committee, will bring forward recommendations, including legislation, to address this growing problem.

As the Department of Justice conducts its investigations, we cannot lose sight of important questions that must be answered, such as but not limited to the following:

Question No. 1: Why did the White House hold a conference call on May 7 with a collection of former national security officials, some of whom are talking heads on network television, to discuss the confidential operation to disrupt the al-Qaida bomb plot?

Question No. 2: Why is the White House cooperating so candidly with Hollywood filmmakers on a movie about the Osama bin Laden raid, one of the most highly secretive operations in the history of this country? While we don't know the date of the public release of this Hollywood production, we can be sure that any release prior to the November Presidential election will fuel a firestorm of accusations of political motives.

Question No. 3: Why would the confidential identity of elite U.S. military personnel be released to Hollywood filmmakers?

Question No. 4: Why would administration officials even talk to reporters or authors writing books or articles about incredibly sensitive operations?

Question No. 5: Did any administration officials—in the White House or not—authorize the disclosure of classified information?

These are just some of the key questions that must be asked in this investigation. There also remain several questions surrounding the current investigations. The appointment of two prosecutors to lead criminal investigations into the recent leaks is a step forward, but the scope remains unclear, as well as the question of whether we should insist on a special counsel given the current concerns about the credibility of the Justice Department.

Will these investigations focus just on the Yemen and Iran issue or will the leaks involving drone strikes and other leaks that have occurred in the past months also be a target of the investigation?

Will White House officials be interviewed as part of this investigation? Which officials will or will not be available to take part in the investigation? Will those who are former or no longer a part of the administration or the Federal Government or those outside it, including those reporters in question, be a part of this investigation?

Will e-mails or phone calls of administration officials be analyzed to identify who spoke with the reporters and authors in question and when?

Again, whether these officials are intentionally leaking classified information is not the main point. If they put themselves in situations where they are discussing or confirming classified information, they must also be held accountable. Public pressure is required to shape these investigations and to ensure all our questions about these events are answered, which is why I am speaking here today.

Every day, we have men and women in uniform serving around the globe to protect and defend this great country, and every day we have intelligence professionals and national security officers working behind the scenes with allies and potential informants to prevent attacks on our country. These leaks undermine all that hard work and all those countless sacrifices. Additionally, it risks lives and the success of future operations. Not only must we plug these damaging and irresponsible leaks, we also must work to do all we can to eliminate or greatly reduce the opportunity for them to occur in the future.

Criminal prosecution and congressional action is not the only solution. We also need public accountability. Administration officials continue to speak off the record with reporters and authors about classified information even after these recent disclosures. It is a practice that contributes to unwise and harmful consequences.

Purposely or accidentally, loose lips can bring about disastrous results. Perhaps the best advice is the saying: ''You don't have to explain what you don't say'' or maybe it is even simpler than that. Maybe the best advice for those who are privy to confidential information is what former Defense Secretary Robert Gates said, and I paraphrase: Just shut the heck up.

I yield the floor.

Mr. LEAHY. Mr. President, last night the Senate voted to end the Republican filibuster of this outstanding nominee. For the 28th time since President Obama was elected, the majority leader was forced to file cloture to get an up-or-down vote on one of President Obama's judicial nominations. Justice Hurwitz is not a nominee who should have been filibustered. With the support of Senator KYL, the partisan effort to stall yet another judicial nomination was defeated. I thank Senator KYL and the Republican Senators who had the good sense to agree to proceed to an up-or-down vote on this nomination.

By any traditional measure, Justice Hurwitz is the kind of judicial nominee who should have been confirmed easily by an overwhelming, bipartisan majority. Justice Hurwitz has served for 9 years on the Arizona Supreme Court and had a distinguished legal career. He has the support of his home state Senators, both conservative Republicans. He was unanimously rated well qualified by the American Bar Association Standing Committee on the Federal Judiciary. And he was nominated to fill a longstanding judicial emergency vacancy on the overburdened

Ninth Circuit after extensive consultation between the White House and the Arizona Senators.

The campaign that was mounted by the extreme right against this outstanding nominee was wrong. I spoke against it yesterday, as did Senator KYL and Senator FEINSTEIN. Some were attempting to disqualify a nominee with impeccable credentials because a Federal judge for whom that nominee clerked some 40 years ago decided a case with which they disagree, a case that is still reflected as the law of the land. We have seen a number of new and disappointing developments during the last 2 years as Republicans have ratcheted up their partisan opposition to President Obama's judicial nominees. On this nomination, for example, I saw for what I think may be the first time a Senator reverse his vote for a nomination and, instead, oppose cloture and support a filibuster of that same nomination.

Justice Hurwitz's nomination is representative of the new standard that has been imposed on President Obama's judicial nominees since this President took office. After close consultation with home State Senators, President Obama sent to the Senate a nominee with unimpeachable credentials. Indeed, in the near decade that he has served on the Arizona Supreme Court, not one of Justice Hurwitz's decisions has been overturned. Despite the bipartisan support for Justice Hurwitz, and his excellent credentials, partisan Republicans have filibustered this nomination.

I heard some Senate Republicans attempt to mischaracterize Justice Hurwitz's record on the death penalty. Over his 9-year tenure on the Arizona Supreme Court, Justice Hurwitz has personally authored eight opinions and joined numerous other opinions upholding the death penalty. He also responded to both Senator GRASSLEY and Senator SESSIONS that ''the death penalty is a constitutionally appropriate form of punishment'' and that he ''has voted in scores of cases to uphold the death penalty.''

Justice Hurwitz's critics argue that he was the lone dissenter in two rulings involving the death penalty, but in each case Justice Hurwitz did not oppose the death penalty but sought to ensure that due process was followed to guarantee fair justice and prevent reversal on appeal. In State v. Beaty, the State of Arizona had decided overnight to apply a new death penalty execution cocktail, and Justice Hurwitz felt that a new execution warrant was necessary. Justice Hurwitz's dissent was not opposing the death penalty; rather, he specifically requested the court ''immediately issue a new [execution] warrant effective as soon as legally possible.''

In State v. Styers, Justice Hurwitz relied on Supreme Court precedent and held that it prevented the Court from affirming the defendant's death sentence when one aggregating factor had not been tried to a jury. In his dissent, Justice Hurwitz reasoned that a limited proceeding on that aggravating factor was ''constitutionally mandated and will likely bring this case to conclusion more promptly than the new round of federal habeas proceedings that will inevitably follow today's decision.'' Thus, Justice Hurwitz did not ''quarrel with the substance of the determination,'' but felt that the procedural error should have been corrected.

The fact that he successfully argued the case of Ring v. Arizona, where the U.S. Supreme Court found by a 7–2 vote that the Constitution requires a jury trial to establish the aggravating circumstances that make a defendant eligible to receive the death penalty, does not make him an opponent of the death penalty any more than Justice Scalia and Justice Thomas, who supported the decision, oppose the death penalty. That case was principally about the defendant's Sixth Amendment right to a jury trial and it was not a challenge to the death penalty.

Moreover, a ''study'' cited that purports to label Justice Hurwitz as ''pro defendant'' is based on a sample size of only 10 criminal cases—and Justice Hurwitz was not on the bench for four of them. That is hardly representative of Justice Hurwitz's career on the bench and the many criminal appeals Justice Hurwitz has heard and the many convictions he has upheld. Let us be honest about his record.

Justice Hurwitz is an outstanding nominee with impeccable credentials and qualifications. He has a record of excellence as a jurist. Not a single decision he has made from the bench in his nine years as justice has been reversed, and he has the strong support of both Republican Senators from Arizona as well as many, many others from both sides of the political aisle.

A graduate of Princeton University and Yale Law School, Justice Hurwitz served as the Note and Comment Editor of the Yale Law Journal. Following graduation, he clerked on every level of the Federal judiciary: First for Judge Jon O. Newman, who was then U.S. District Judge on the District of Connecticut. Subsequently, he clerked for Judge Joseph Smith of the U.S. Court of Appeals for the Second Circuit. Then he clerked for Justice Potter Stewart of the U.S. Supreme Court.

He then distinguished himself in private practice, where he spent over 25 years at a law firm in Phoenix, Arizona. While in private practice, Justice Hurwitz tried more than 40 cases to verdict or final decision. Justice Hurwitz has also taught classes at Arizona State University's Sandra Day O'Connor College of Law for approximately 15 years on a variety of subjects including ethics, Supreme Court litigation, legislative process, civil procedure, and Federal courts.

By any traditional measure, Justice Hurwitz is the kind of judicial nominee who should be confirmed easily by an overwhelming, bipartisan vote. And now that the Senate has been forced to invoke cloture with 60 votes to end a partisan filibuster, I hope the Senate will vote to confirm him with bipartisan support.

I will conclude by emphasizing what I have been saying for months, that the Ninth Circuit is in dire need of assistance. This nomination should have been considered and confirmed months ago. The Chief Judge of the Ninth Circuit along with the members of the Judicial Council of the Ninth Circuit, wrote to the Senate months ago emphasizing the Ninth Circuit's ''desperate need for judges,'' urging the Senate to ''act on judicial nominees without delay,'' and concluding ''we fear that the public will suffer unless our vacancies are filled very promptly.'' The judicial emergency vacancies on the Ninth Circuit harm litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly 5 months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of September 2011, the Ninth Circuit had 14,041 cases pending before it, far more than any other circuit.

When Senate Republicans filibustered the nomination of Caitlin Halligan to the D.C. Circuit for positions she took while representing the State of New York, they contended that their underlying concern was that the caseload of the D.C. Circuit did not justify the appointment of another judge to that Circuit. I disagreed with their treatment of Caitlin Halligan, their shifting standards and their purported caseload argument. But if caseloads were really a concern, Senate Republicans would not have delayed action on the nominations to judicial emergency vacancies on the overburdened Ninth Circuit for months and months.

So, let us move forward to confirm Justice Hurwitz without further delay. The partisan filibuster against this nomination was wrong. Just as we moved forward after defeating the filibuster of the nomination of Judge Jack McConnell, let us move forward now to vote on the 17 other judicial nominees ready for final Senate action and make real progress in working with the President to fill judicial vacancies around the country.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, shortly, we are going to move to confirm the judge whose nomination we voted to move forward to last night. If everyone will be at ease for just a moment.

Let me ask Senator COBURN how long he wishes to speak.

Mr. COBURN. Mr. President, I will speak in conjunction with the majority whip for a short period of time. I don't have a long speech.

Mr. REID. If the Senator will be patient, we will get this done very quickly.

Mr. COBURN. You bet.

Mr. REID. Mr. President, the matter before the Senate is the nomination of Judge Hurwitz; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. I yield back all time on this nomination.

The PRESIDING OFFICER. If there is no further debate, all time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Andrew David Hurwitz, of Arizona, to be United States Circuit Judge for the Ninth Circuit.

The nomination was confirmed.

Mr. ALEXANDER. I wonder if the majority leader would permit me to make a brief statement.

Mr. REID. I will in one second.

ORDER OF PROCEDURE

Mr. REID. I ask unanimous consent that immediately upon the adoption of the motion to proceed to S. 3240, there be a period of debate only on the bill until 4 p.m. today and that the majority leader be recognized at that time.

The PRESIDING OFFICER. Is there objection?

There being no objection, it is so ordered.

LEGISLATIVE SESSION

AGRICULTURE REFORM, FOOD, AND JOBS ACT OF 2012—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session and will resume consideration of the motion to proceed to S. 3240, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 415, S. 3240, a bill to reauthorize the agriculture programs through 2017, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the motion to proceed is agreed to.

The Senator from Tennessee.

VOTE ON HURWITZ CONFIRMATION

Mr. ALEXANDER. Mr. President, I thank the majority leader. I simply wanted to say I did not object to a voice vote on Mr. Hurwitz's confirmation, but I wished to make this statement.

Last night, I voted for cloture because when I became a Senator, Democrats were blocking an up-or-down vote on President Bush's judicial nominees. I said then that I would not do that and did not like doing that. I have held to that in almost every case since then. I believe nominees for circuit judges, in all but extraordinary cases, and district judges in every case ought to have an up-or-down vote by the Senate.

So while I voted for cloture last night, if we had a vote today, I would have voted no against confirmation because of my concerns about Mr. Hurwitz's record on right-to-life issues.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I just want to have it noted for the record that I would have voted no on this nominee had we had a recorded vote.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I associate myself with those last two remarks. I would have also voted no. I wish we had had a recorded vote.

I wasn't able to understand even what the majority leader was saying, it was spoken so softly, but had we had a recorded vote, I would have been listed as no.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I was shocked and disappointed to learn that the majority leader came to the floor to yield back all time and move immediately to a voice vote on the nomination of Andrew David Hurwitz to be U.S. Circuit Judge for the ninth circuit. I find this to be quite irregular and outside the recent precedents of this Senate. Typically, Members are informed of such actions in advance. I was not so informed, and I am the ranking member of the Judiciary Committee. I certainly did not intend to yield my time and, in fact, I intended to speak further on the nominee, particularly to make clear some corrections that I think needed to be made after I debated this yesterday.

Regardless of yielding time or further debate, I expected a rollcall vote on this nominee. This has been Senate precedent recently. Before today, cloture was invoked on 22 different judicial nominees. Only 1 of those 22 was confirmed without a rollcall vote—Lavenski Smith to the eighth circuit. Cloture was invoked 94 to 3 on July 15, 2002, and he was confirmed by unanimous consent later that day. Even Barbara Keenan, fourth circuit, had a confirmation rollcall after cloture was invoked 99 to 0.

Furthermore, it has been our general understanding around here for some time that circuit votes would be by rollcall vote. So I am extremely disappointed that there has been a breach of comity around here.

Yesterday I outlined my primary concerns regarding the nomination of Andrew David Hurwitz to be U.S. Circuit Judge for the ninth circuit. I continue to oppose the nomination and will vote no on his confirmation.

I want to supplement and correct the RECORD on a few issues that arose during yesterday's debate. One of the biggest misunderstandings is that opposition to Justice Hurwitz is based on a 40 year-old decision made by a Judge other than Justice Hurwitz. I do not oppose his nomination because of what somebody else did, or because Justice Hurwitz was a law clerk. My opposition, on this issue, is based on what Mr. Hurwitz himself takes credit for.

He authored the article in question, not as a young law clerk, but when he was well established and seasoned lawyer, shortly before joining the Arizona Supreme Court. In that article Justice Hurwitz praised Judge Newman's opinion for its ''careful and meticulous analysis of the competing constitutional issues.'' He called the opinion ''striking, even in hindsight.'' Let me remind you, the constitutional issues and analysis he praises is Newman's influence on the Supreme Court's expansion of the ''right'' to abortion beyond the first trimester of pregnancy. This, Hurwitz wrote, ''effectively doubled the period of time in which states were barred from absolutely prohibiting abortions.''

Hurwitz's article was clearly an attempt to attribute great significance to decisions in which the judge for whom he had clerked had participated. I think by any fair measure, it is impossible to read Justice Hurwitz's article and not conclude that he wholeheartedly embraces Roe, and importantly, the constitutional arguments that supposedly support it.

Now it would not be surprising to learn that Justice Hurwitz might not be a pro-life judge. The question is not his personal views, but his judicial philosophy. He defends the legal reasoning of Roe, despite near universal agreement, among both liberal and conservative legal scholars, that Roe is one of the worst examples of judicial activism in our Nation's history.

I have also raised my concern that Justice Hurwitz's personal views do seep into his decisions as a judge. Yesterday, I discussed his troubling record on the death penalty and how he appears to be pro-defendant in his judicial rulings. Some of my colleagues came to the floor and stated they were unaware of even one case where his personal views influenced his judicial decision making. So I will review a bit of the record.

While in private practice, Justice Hurwitz successfully challenged Arizona's death penalty sentencing scheme in Ring v. Arizona, even though the law previously had been upheld by the Supreme Court of the United States in Walton v. Arizona.

After the Ring decision, Hurwitz, attempted to expand the ruling by asking the Arizona Supreme Court to either throw out each man's death sentence and order a new trial or to resentence each to life imprisonment with the possibility of parole, saying that allowing the previous death sentence to stand would be a ''dangerous precedent.'' The Arizona Supreme Court refused to overturn the convictions and death sentences on a blanket basis, ruling that the trials were fundamentally fair and that the U.S. Supreme Court's ruling didn't require throwing out all the death sentences.

Justice Hurwitz didn't stop there. While on the Arizona Supreme Court,