

that came out of the committee and the bill that is on the floor today.

The first package of reported bills did not contain a rail title at all. So if the bill that is before us today is accepted and cloture is invoked, we will have a Senate highway bill that does not have a rail provision. We will go to conference without a Senate position on a rail provision, which the House has.

Senator ROCKEFELLER and I have worked together on this rail part. We have worked with all of the stakeholders in the rail industry as well as Amtrak, and we have come forward with a bill the Republicans support and most of the Democrats support on the committee. It will lead to better rail planning at the Department of Transportation, and it will enhance rail economic regulation on the Surface Transportation Board. The rail title would also allow the commuter and freight rails to apply for extensions for implementation of positive train control on an as-needed basis, and it directs the DOT to use the 2015 route map to implement positive train control, as Congress intended when it passed its law in 2008.

All of these important policy gains will be lost if we adopt the cloture vote today. I hope my colleagues will vote no on cloture so we can put the provisions that have been agreed to on a bipartisan basis in the bill so that the Commerce title will reflect the full Commerce Committee, rather than what came out that had not been fully vetted and is not the position of the full Commerce Committee, with Republicans and Democrats together. I hope we will have that chance to put the new version together that would include the compromises that have been made on a bipartisan basis.

Mrs. BOXER. Would the Senator yield? And I ask unanimous consent that she have an additional 60 seconds.

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

Mrs. HUTCHISON. I am happy to yield.

Mrs. BOXER. I just wanted to make the point that I think Senator HUTCHISON has been probably one of the most productive members of the Commerce Committee I have ever seen. I have been on that committee for a very long time. Her relationship with Senator ROCKEFELLER is stellar. I too believe she makes a point when she says they have continued to work together since the bill was reported out and they have come to agreement.

So I guess my question is, as someone who has given flesh, blood, sweat, and tears on this highway bill, knowing that we have a couple of these bumps in the road, should we not invoke cloture today—I personally hope we do, and we can fix the bill, but if we don't—and if Senator ROCKEFELLER and Senator HUTCHISON are able to take their work and put that in as a substitute, would my friend be back on

board here working toward completion of this bill?

Mrs. HUTCHISON. If I understand the question of the Senator from California, if we can substitute at some point the compromise language in the Commerce title, I am going to be absolutely supportive of this bill because I trust Senator ROCKEFELLER. We have worked together. We have both given. He doesn't like parts of this bill, I don't like parts of it, but we have given.

I would say the Senator from California has done a stellar job with the Senator from Oklahoma on the underlying bill. Oh my gosh, what a complicated bill. The Senator from California is the chairman, the ranking member is from Oklahoma, and they have worked for the good of America on this bill. The Banking Committee has a bipartisan title. I believe there is a compromise coming forward in the Finance Committee. I am not familiar with that, but I know the compromise title of the Commerce Committee has been worked through fully with everybody on board, and it will be acceptable, I believe, to the whole Senate.

So I think we are just a little premature today. I think we need to stop cloture. I think we need to make the changes that are required, and I think this bill will sail in the future.

Mrs. BOXER. I thank the Senator.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Reid amendment No. 1633 to S. 1813, a bill to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes.

Harry Reid, John D. Rockefeller IV, Kay R. Hagan, Patrick J. Leahy, Patty Murray, Sheldon Whitehouse, Richard Blumenthal, Herb Kohl, Ben Nelson, Jeff Bingaman, Jeanne Shaheen, Barbara A. Mikulski, Jack Reed, Max Baucus, Frank R. Lautenberg, Robert Menendez, Maria Cantwell.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 1633, offered by the Senator from Nevada, Mr. REID, to S. 1813, a bill to reauthorize Federal-aid highway and highway safety construction programs, 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 legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Illinois (Mr. KIRK), the Senator from

Kansas (Mr. ROBERTS), and the Senator from Louisiana (Mr. VITTER).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 54, nays 42, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—54

Akaka	Hagan	Murray
Baucus	Harkin	Nelson (NE)
Begich	Heller	Nelson (FL)
Bennet	Inouye	Pryor
Blumenthal	Johnson (SD)	Reed
Boxer	Kerry	Reid
Brown (MA)	Klobuchar	Rockefeller
Brown (OH)	Kohl	Sanders
Cantwell	Landrieu	Schumer
Cardin	Lautenberg	Shaheen
Carper	Leahy	Stabenow
Casey	Levin	Tester
Conrad	Lieberman	Udall (CO)
Coons	Manchin	Udall (NM)
Durbin	McCaskill	Warner
Feinstein	Menendez	Webb
Franken	Merkley	Whitehouse
Gillibrand	Mikulski	Wyden

NAYS—42

Alexander	DeMint	McCain
Ayotte	Enzi	McConnell
Barrasso	Graham	Moran
Blunt	Grassley	Murkowski
Boozman	Hatch	Paul
Burr	Hoeven	Portman
Chambliss	Hutchison	Risch
Coats	Inhofe	Rubio
Coburn	Isakson	Sessions
Cochran	Johanns	Shelby
Collins	Johnson (WI)	Snowe
Corker	Kyl	Thune
Cornyn	Lee	Toomey
Crapo	Lugar	Wicker

NOT VOTING—4

Bingaman	Roberts
Kirk	Vitter

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 54, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Under the previous order, the motion to recommit and amendment No. 1633 are withdrawn.

EXECUTIVE SESSION

NOMINATION OF JESSE M. FURMAN TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Jesse M. Furman, of New York, to be United States District Judge for the Southern District of New York.

The ACTING PRESIDENT pro tempore. Under the previous order, the cloture motion on this nomination is withdrawn.

There is now 2 minutes equally divided prior to a vote on the nomination.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I appreciate the fact that the filibuster has

been dropped on this very good man. This nomination has taken months to get here. I would urge everybody to vote for it.

Mr. LEAHY. Mr. President, I commend the majority leader for pressing forward to obtain a vote on the nomination of Jesse Furman, finally bringing to an end the 5-month Republican filibuster of this nomination. It should not have taken five months and the filing of a cloture petition to secure a vote on this superbly qualified, consensus nominee. When the Judiciary Committee voted on this nomination last September, it had the support of every Democrat and ever Republican on the Committee. Yesterday, I spoke, again, of the dangers posed by this Republican filibuster of a consensus Federal district court nominee. I am glad Senate Republicans have backed away from their misguided effort.

The extended delay in considering the Furman nomination has not only been damaging to the Federal District Court of New York, but also to the people it serves. This has also led to some extreme groups on the far right making scurrilous attacks on the reputation of this good man. I trust that no Senator will credit the mischaracterizations of Mr. Furman's record. His role in filing an amicus brief in a First Amendment case in the Supreme Court on behalf of the Anti-Defamation League when he was in private practice has been misquoted and mischaracterized to the point where you have to wonder if it is intentional. Of course, no lawyer should be disqualified from being a judge for advocating on behalf of client. Were the Senate to go down that road, we would disqualify many outstanding lawyers capable of being excellent judges. Senate Republicans filibustered Judge Jack McConnell of Rhode Island because he represented parents and children exposed to health risks by lead in paint. That error should not be repeated.

I am glad the Senate is finally voting on this nomination. With 21 judicial nominations approved by the Senate Judiciary Committee awaiting a final vote, with one out of every 10 Federal judgeships vacant throughout the country, and with the Senate still more than 40 confirmations behind the pace we set with President Bush, the Senate cannot afford this continuing obstruction and delay of judicial confirmations. This filibuster, like the filibuster of Judge Adalberto Jordan that we finally ended earlier this week and others, bring derision upon the Senate, are a colossal waste of the time, and harm our Federal courts and the American people seeking justice.

I, again, urge Senate Republicans to abandon the damaging tactics that led to this unnecessary 5-month filibuster of the Furman nomination, the shameful 4-month and 2-day filibuster of the Jordan nomination, and to abandon their continued stalling of 20 additional judicial nominees ready for final consideration and confirmation. I,

again, urge Senate Republicans to join with us to restore the Senate's long-standing practice of considering and confirming consensus nominees without extended delays. The American people deserve no less.

Mr. GRASSLEY. Mr. President, today we turn to the nomination Jesse M. Furman, to be U.S. district judge for the Southern District of New York. Mr. Furman was reported out of the Judiciary Committee last fall by voice vote.

When we considered his nomination last year, a few items of concern were raised. These issues included writings he made while in college on gun control and an amicus brief he drafted opposing a religious club's access to school facilities for meetings.

Based on his hearing testimony and responses to written questions, I was willing to allow Mr. Furman's nomination to move to the full Senate for consideration.

In the interim, conditions have changed which require me to give a closer scrutiny to Mr. Furman's record and to the confirmation process in general.

Generally, I am willing to give the President's nominees the benefit of the doubt when the nominee on the surface meets the requirements I have previously outlined. But as I indicated over the past few weeks, we are not operating under normal circumstances. The atmosphere the President has created with his disregard for Constitutional principles has made it difficult to give his nominees any benefit of the doubt. Given that I did have some doubts about Mr. Furman's record, I oppose his confirmation.

Mr. LEAHY. I yield to the Senator from New York.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank the chairman and the Judiciary Committee for reporting Jesse Furman out without dissent. Furman is a truly excellent figure. He clerked for the Supreme Court, has the support of all the clerks with whom he served, including those from Scalia and Rehnquist, on both sides of the aisle.

He worked for Attorney General Mukasey and clerked for Mr. Mukasey. He is truly a moderate. He could be nominated just as easily in the grand tradition of judicial integrity by someone from this side of the aisle or that side of the aisle.

If we cannot approve Mr. Furman and have a close-to-unanimous vote on him, I do not know on whom we can because he is such an excellent, thoughtful, and moderate judge. So I hope all of my colleagues on both sides of the aisle will vote for him. It may begin to mark a new wave, at least, in dealing with district court judges.

Mrs. GILLIBRAND. Mr. President, I would like to offer my support for the confirmation of a highly qualified and accomplished New Yorker, Jesse Furman who has been nominated by

President Obama to serve the United States District Court for the Southern District of New York.

Jesse is currently the Assistant United States Attorney in the Southern District of New York where he has served as Deputy Chief Appellate Attorney since 2009. Previously, he worked in the Office of the Attorney General at the Department of Justice where he served as Counselor to the Attorney General. He has also worked in the law firm of Wiggin & Dana. From 2002-2003, he clerked for the Honorable David H. Souter of the Supreme Court and from 1999-2000 for the Honorable Jose A. Cabranes of the United States Court of Appeals for the Second Circuit. He also served as a law clerk for the Honorable Michael B. Mukasey of the United States District Court for the Southern District of New York.

Jesse received his law degree from Yale Law School in 1998 and his bachelor's degree from Harvard University in 1994 where he graduated summa cum laude. He also served as a Henry Fellow at Oxford University.

Because of Jesse's extensive legal career, I am more than confident that he has the experience to serve the Southern District of New York with great competence and fairness.

While Jesse is more than qualified to be appointed to a judgeship, his confirmation has been delayed for 5 months by Senate Republicans. What makes this puzzling is the fact that Jesse's nomination was reported unanimously by the Judiciary Committee without opposition from a single member of the Committee. Not a single member. This is the ninth judicial nominee that Majority Leader REID has had to file cloture on to end a Republican filibuster and secure an up or down vote. It should be noted that Senate Republicans have yet to explain why they refused to consent to Jesse's nomination.

In addition, Jesse's nomination is supported by numerous conservatives including former United States Attorney General under G.W. Bush Michael Mukasey who stated: "My view of him is perhaps best reflected in the fact that he is the first person I sought to hire after I was confirmed as Attorney General . . . his advice was unerringly sound and his help indispensable."

Furthermore, former Supreme Court clerks who served at the same time as Mr. Furman, including clerks for conservative Justices such as Chief Justice Rehnquist, Justice Thomas, and Justice Scalia stated that: "Mr. Furman has brought tremendous intellectual rigor, an open mind, and good common sense."

I want to remind my colleagues that Senate Democrats worked to confirm 100 of President Bush's judicial nominees in 17 months. Blocking Jesse's nomination is highly unusual and incredibly disappointing and quite frankly, irresponsible.

I want to thank Chairman LEAHY for his leadership on the Judiciary Committee in the effort to confirm highly

qualified individuals such as Jesse Furman. Jesse's commitment to upholding fairness within our legal system is well regarded and highly respected. I strongly support his nomination and believe that if confirmed, Jesse will be an excellent Judge to serve on the United States District Court for the Southern District of New York and I urge my colleagues to vote favorably for his confirmation.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I yield back the remainder of our time.

The ACTING PRESIDENT pro tempore. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Jesse M. Furman, of New York to be United States District Judge for the Southern District of New York?

Mr. TOOMEY. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Illinois (Mr. KIRK), the Senator from Kansas (Mr. ROBERTS), and the Senator from Louisiana (Mr. VITTER).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 34, as follows:

[Rollcall Vote No. 21 Ex.]

YEAS—62

Akaka	Graham	Murray
Alexander	Hagan	Nelson (NE)
Baucus	Harkin	Nelson (FL)
Begich	Inouye	Pryor
Bennet	Johnson (SD)	Reed
Blumenthal	Kerry	Reid
Boxer	Klobuchar	Rockefeller
Brown (MA)	Kohl	Sanders
Brown (OH)	Kyl	Schumer
Cantwell	Landrieu	Sessions
Cardin	Lautenberg	Shaheen
Carper	Leahy	Snowe
Casey	Levin	Stabenow
Collins	Lieberman	Tester
Conrad	Manchin	Udall (CO)
Coons	McCain	Udall (NM)
Corker	McCaskill	Warner
Durbin	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murkowski	

NAYS—34

Ayotte	Enzi	McConnell
Barrasso	Grassley	Moran
Blunt	Hatch	Paul
Boozman	Heller	Portman
Burr	Hoeven	Risch
Chambliss	Hutchison	Rubio
Coats	Inhofe	Shelby
Coburn	Isakson	Thune
Cochran	Johanns	Toomey
Cornyn	Johnson (WI)	Wicker
Crapo	Lee	
DeMint	Lugar	

NOT VOTING—4

Bingaman	Roberts
Kirk	Vitter

The nomination was confirmed.

The ACTING PRESIDENT pro tempore. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. The Senate will resume legislative session.

The Senator from Montana.

TAX RELIEF AND JOB CREATION ACT— CONFERENCE REPORT

Mr. BAUCUS. Mr. President, I assume the next business is the vote on the payroll bill. Before that, I will take 1 minute.

As we vote on this bill and prepare to go home, I ask you to remember four numbers: No. 1, 160 million; that is the number of Americans who are helped by this bill. The next number is 1,000; that is \$1,000 that each of those Americans is going to benefit by, by passage of the bill. The next number is 13 million, which is the number of Americans who are unemployed and would be dramatically helped by this bill. Finally, 48 million, which is the number of seniors in America who have doctors take care of their health care needs.

Remember those four numbers and vote for this bill. Remember, the other body passed this bill by a margin of 293 to 132, evenly split between Republicans and Democrats. I urge passage of the bill.

Mr. President, there are a number of mistakes in the Joint Explanatory Statement of the Committee of Conference on H.R. 3630 related to sections 7003 and 7004 and the current law description of those sections:

No. 1, on page 36, in the paragraphs describing current law, the last clause of the last sentence of the third paragraph should read:

A Senate point-of-order against emergency designations under BBEDCA exists pursuant to section 511 of public law 112 78.

No. 2, on page 37, in the paragraphs describing the conference substitute, the description of section 7003 should be deleted, and the paragraph labeled Section 7004 should be re-designated as section "Section 7003" and should read:

Paygo Scorecard Estimates—The budgetary effects of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

Mr. ROCKEFELLER. On behalf of myself and Senator BAUCUS, I wish to state that title VI of the conference report to H.R. 3630, the Middle Class Tax Relief and Job Creation Act of 2012, contains landmark bipartisan legislation that more than 10 years after 9/11 will provide police, firefighters, and other first responders with a nationwide, interoperable wireless broadband network for public safety. This legislation will also help ease the Nation's growing spectrum shortage, through the auction of new spectrum to commercial providers. Revenues from these

spectrum auctions will fund the public safety network—and contribute \$15.2 billion to the unemployment compensation fund.

Specifically, Title VI of the conference report provides \$7 billion in spectrum auction proceeds as well as D-Block spectrum worth \$2.75 billion to develop a nationwide, interoperable wireless broadband network for public safety officials through a new First Responder Network Authority. The title also directs the Federal Communications Commission, FCC, to auction underutilized spectrum and provides the agency with authority to hold voluntary incentive auctions. These auctions are expected to raise more than \$25 billion in revenue. In addition, the title authorizes the FCC to create guard bands in the broadcast spectrum that can be used for innovative new unlicensed uses like Super Wi-Fi. These efforts will help meet the growing spectrum demands of smartphones and tablets. Moreover, investment in the wireless economy is expected to create hundreds of thousands of new jobs.

The title is based on bipartisan legislation developed by Senator ROCKEFELLER and Senator HUTCHISON, S. 911, and a comparable House bill, H.R. 3630. The public safety provisions are based on the national model first developed in S. 911, with some changes to ensure flexibility for States. The spectrum auction provisions are based on the auction model in H.R. 3630, with some changes regarding unlicensed spectrum and FCC auction rules.

As to public safety provisions, title VI of the conference report provides for the construction of a nationwide, interoperable public safety wireless broadband network. It does this using the D-Block spectrum, which is ideally located for fostering seamless communication among first responders. It will allow them to take full advantage of broadband functions in emergencies e.g., allowing firefighters to download floor plans to see inside buildings before they enter. It also will promote economies of scale and efficiencies from using the same spectrum nationwide.

The title creates a First Responder Network Authority as an independent entity within the National Telecommunications and Information Administration, NTIA, and provides the Authority with \$7 billion and a license to use the D-Block to build the nationwide public safety network. To ensure efficiency, the title requires that the Authority leverage existing commercial networks in construction. To ensure national interoperability, the title also creates a technical advisory board at the FCC to develop initial interoperability standards. States that want to construct their own portion of the National public safety network have the option to apply for Federal grants to build and operate the radio access network in the State if they can demonstrate to the FCC that the network will meet the interoperability standards and to the NTIA that they have