

hold the tradition of excellence and equity and equality well into the future.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. BLACKBURN). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BOOZMAN). Without objection, it is so ordered.

#### CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill 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, do hereby move to bring to a close debate on the nomination of Patrick J. Bumatay, of California, to be United States Circuit Judge for the Ninth Circuit.

Mitch McConnell, Tom Cotton, John Boozman, Mike Crapo, Thom Tillis, Chuck Grassley, Jerry Moran, Kevin Cramer, John Barrasso, Mike Braun, Joni Ernst, Pat Roberts, John Cornyn, Roy Blunt, John Thune, Lindsey Graham, Roger F. Wicker.

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 nomination of Patrick J. Bumatay, of California, to be United States Circuit Judge for the Ninth Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Idaho (Mr. RISCH), the Senator from South Dakota (Mr. ROUNDS), the Senator from Florida (Mr. RUBIO), the Senator from Nebraska (Mr. SASSE), and the Senator from South Carolina (Mr. SCOTT).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted "yea" and the Senator from Florida (Mr. RUBIO) would have voted "yea."

Mr. DURBIN. I announce that the Senator from Colorado (Mr. BENNET), the Senator from New Jersey (Mr. BOOKER), the Senator from California (Ms. HARRIS), the Senator from Minnesota (Ms. KLOBUCHAR), the Senator from Vermont (Mr. SANDERS), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

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

The yeas and nays resulted—yeas 47, nays 41, as follows:

[Rollcall Vote No. 386 Ex.]

#### YEAS—47

Barrasso	Ernst	Moran
Blackburn	Fischer	Murkowski
Blunt	Gardner	Paul
Boozman	Graham	Perdue
Braun	Grassley	Portman
Burr	Hawley	Roberts
Capito	Hoeben	Romney
Cassidy	Hyde-Smith	Scott (FL)
Collins	Inhofe	Shelby
Cornyn	Isakson	Sullivan
Cotton	Johnson	Thune
Cramer	Kennedy	Tillis
Crapo	Lankford	Toomey
Cruz	Lee	Wicker
Daines	McConnell	Young
Enzi	McSally	

#### NAYS—41

Baldwin	Heinrich	Rosen
Blumenthal	Hirono	Schatz
Brown	Jones	Schumer
Cantwell	Kaine	Shaheen
Cardin	King	Sinema
Carper	Leahy	Smith
Casey	Manchin	Stabenow
Coons	Markey	Tester
Cortez Masto	Menendez	Udall
Duckworth	Merkley	Van Hollen
Durbin	Murphy	Warner
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden
Hassan	Reed	

#### NOT VOTING—12

Alexander	Klobuchar	Sanders
Bennet	Risch	Sasse
Booker	Rounds	Scott (SC)
Harris	Rubio	Warren

The PRESIDING OFFICER. On this vote, the yeas are 47, the nays are 41.

The motion is agreed to.

The Senator from North Carolina.

#### ORDER OF PROCEDURE

Mr. TILLIS. Mr. President, I ask unanimous consent that the postcloture time on the Bumatay nomination expire at 12:15 p.m. on Tuesday, December 10, and that if confirmed, the motion to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate's action.

I further ask unanimous consent that notwithstanding rule XXII, following the cloture vote on the VanDyke nomination, the Senate proceed to legislative session and to the immediate consideration of Calendar No. 290, S. 2740. I further ask unanimous consent that there be 2 minutes of debate, equally divided between the leaders and their designees, and that upon the use or yielding back of that time, the bill be considered read a third time and the Senate vote on the passage of the bill with no intervening action or debate and that the Senate then resume executive session.

Finally, I ask unanimous consent that at 12 noon, on Wednesday, December 11, the Senate proceed to legislative session and to the immediate consideration of H.R. 2333, which was received from the House, and that the bill be considered read a third time and the Senate vote on its passage with no intervening action or debate.

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

LEGISLATIVE SESSION

#### MORNING BUSINESS

Mr. TILLIS. Mr. President, I ask unanimous consent that the Senate proceed to legislative session and be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

#### S. 2942

Ms. MURKOWSKI. Mr. President, I rise today to say how pleased I am to join with the Senator from New Hampshire in introducing S. 2942, a bill to revise the tax treatment of certain contributions to the capital of corporations.

S. 2942 corrects a provision in the 2017 Tax Cuts and Jobs Act that disqualified government grants to corporations from treatment as tax-free contributions to capital. The provision resulted in the imposition of income tax on all such grants. At the same time, a companion provision in the act imposed income tax on "contributions in aid of construction," CIAC, to regulated water utilities, reversing a long-standing rule of prior law that shielded regulated water utilities from tax on such payments. The term CIAC refers to payments—from either governmental sources or other sources that are used by a utility to expand its physical plant.

Our bill corrects the TCJA, first, by restoring the tax exemption for CIAC received by water utilities. That change will ensure that Alaskans, along with all water utility customers around the country, who make payments to a water utility to help the utility expand its service territory or otherwise improve its physical plant will not thereby saddle the utility with a tax charge that could translate into an increase in rates for water service or that, alternatively, could be passed back to the payer of the CIAC.

There is no plausible basis for taxing CIAC received by water utilities and thereby saddling the utility and its customers with the tax charge. CIAC does not at all resemble normal taxable income received by a business in exchange for goods or services. In fact, our bill specifically precludes the utility from including CIAC in its rate base and thereby earning a return on it.

The treatment of CIAC as taxable income might not matter if water utilities could expense the cost of the capital improvements funded through CIAC. The expensing deduction would offset the income. But under the TCJA, regulated utilities do not qualify for expensing. Thus, they incur the tax on the receipt of CIAC and pass the tax on to the payer of the CIAC.