

## VOTE EXPLANATION

• Mr. KERRY. Mr. President, I was necessarily absent for the cloture vote on the motion to proceed to legislation to provide civilian payroll tax relief, to reduce the Federal budget deficit, and for other purposes, S. 1931. If I were able to attend today's session, I would have opposed cloture on this bill. •

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we move to a period of morning business, with Senators allowed to speak up to 10 minutes each.

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

## EXECUTIVE SESSION

## NOMINATION OF CAITLIN JOAN HALLIGAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. REID. Mr. President, I move to proceed to executive session to consider Calendar No. 43, and I send a cloture motion to the desk. In fact, it is at the desk.

## CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit.

Harry Reid, Patrick J. Leahy, Charles E. Schumer, Christopher A. Coons, Amy Klobuchar, Al Franken, Richard Blumenthal, Sheldon Whitehouse, Richard J. Durbin, Dianne Feinstein, Herb Kohl, Kirsten E. Gillibrand, Tom Udall, Ron Wyden, Robert P. Casey, Jr., Sherrod Brown, Jeanne Shaheen.

Mr. REID. Mr. President, I ask unanimous consent that on Tuesday, December 6, 2011, at 11 a.m., the Senate proceed to executive session to consider Calendar No. 43; that there be 1 hour for debate, equally divided in the usual form prior to the cloture vote; further, that the mandatory quorum under rule XXII be waived.

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

## LEGISLATIVE SESSION

Mr. REID. Mr. President, I now ask unanimous consent to resume legislative session.

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

The Senator from Kansas.

## PAYROLL TAX HOLIDAY

Mr. MORAN. Mr. President, just a few moments ago we cast several votes in regard to the so-called payroll tax holiday. I opposed both the Republican amendment and the Democratic amendment.

There were significant differences between these two versions of this legislation; in part, the differences at least included the way that the provisions were paid for. While I may support the pay-fors, I objected to what the pay-fors are paying for.

I support freezing the pay of Members of Congress, the elimination of certain benefits to millionaires, and reducing the Federal workforce. But wouldn't we be better using the proceeds of these reductions in spending to reduce the debt and deficit rather than a short-term change that reduces the revenues going to the Social Security and Medicare trust funds? When are we going to admit we are broke?

I am reminded of a plan approved by Congress just several years ago where we borrowed money to give citizens a \$600 rebate, all in the name of a stimulus. We wanted to stimulate the economy and, in my view, what we did was we stimulated little and increased the debt a lot.

Many of us have expressed support for the concepts contained in the Bowles-Simpson deficit reduction plan. Their recommendations are very important and we have paid a lot of attention to them and expressed our desire to proceed in that way. Many times we have said that. But the legislation we just voted on uses many of their suggested reductions in spending, not for deficit reduction but for another stimulus plan. The Bowles-Simpson plan has been hijacked once again in the name of stimulating the economy.

These proposals also undermine the foundation of Social Security. We are reducing the payments into the trust fund. We should leave the trust fund alone and cut spending and use those savings to pay down our annual deficits and live within our means. Once again, we are putting off difficult decisions and leaving it up to our children and grandchildren to pay for our irresponsibility.

Finally, let me, once again, on this floor make the case for certainty in our Tax Code. Congress is tinkering tonight with the Tax Code, creating greater uncertainty. In almost every conversation I have with a business owner, they ask for certainty in the Tax Code and certainty in the regulatory environment. But instead, tonight we are changing or attempting to change the Tax Code one more time, for a short period of time, claiming some benefit for doing so. Instead, we should focus on long-term tax policy and a Tax Code that is simpler and certain. Certainty is something that will create jobs.

I expect there to be some criticism of the votes I just cast, and I can hear the

campaign sound bites. But we have to get beyond the next election and get to the next generation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

## DEFENSE AUTHORIZATION

Mr. MERKLEY. Mr. President, tonight, I voted against final passage of the Defense authorization bill, and I rise now to explain why I voted against it and the considerable concerns I have about the vast expansion of the powers of detention of American citizens that were contained in that bill.

These provisions related to the detention of American citizens—without the standard rights of the fifth and sixth amendment—have been an object of intense debate on the floor of the Senate over the last several days.

As a Senator who has now been here 3 years, I can say unequivocally that this debate was extremely valuable. Folks came from both parties on both sides of this issue and shared their insights, both from their life experiences, from their scholarly knowledge of the law, and certainly from their philosophy, and I commend all who participated in that debate. I listened to a great deal of that debate on both sides. I thought this was extraordinarily important; issues surrounding our Bill of Rights and the rights of American citizens, protection from the abuse of power.

Some came to this floor and said that essentially the detention provisions in this bill simply clarify existing law and will enhance our national security, and they did so with sincere hearts and sharp minds. Others came, equally sincere, equally learned, and argued the opposite side; that the detention provisions in this bill constitute a devastating circumvention of the fifth amendment right to due process and the sixth amendment right to a speedy trial by impartial jury, as well as a sixth amendment right to confront the witnesses against him or her. Maybe it is useful to take a look at what the fifth and sixth amendments actually say.

One of the last clauses of the fifth amendment notes that:

No person shall be deprived of life, liberty, or property without due process of law.

I think we all grow up in this country absolutely believing in this fundamental value that the government cannot take from you your life, your liberty or your property without the process of law.

The sixth amendment notes that, in prosecutions, the accused shall enjoy the right to a speedy and public trial—and I emphasize public trial—by an impartial jury of the state. It goes on to note that the accused shall be able to confront the witnesses against him and to have the assistance of counsel. So these basic issues of speedy and public trial, an impartial jury, the assistance of counsel, and the ability to confront