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,