

the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Vermont (Mr. SANDERS) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Idaho (Mr. CRAPO), the Senator from Missouri (Mr. HAWLEY), and the Senator from Louisiana (Mr. KENNEDY).

The result was announced—yeas 90, nays 4, as follows:

[Rollcall Vote No. 170 Ex.]

#### YEAS—90

|              |              |            |
|--------------|--------------|------------|
| Baldwin      | Graham       | Paul       |
| Barrasso     | Grassley     | Peters     |
| Bennet       | Hagerty      | Reed       |
| Blackburn    | Hassan       | Ricketts   |
| Blumenthal   | Heinrich     | Risch      |
| Booker       | Hickenlooper | Romney     |
| Boozman      | Hirono       | Rosen      |
| Braun        | Hoeven       | Rounds     |
| Brown        | Hyde-Smith   | Rubio      |
| Budd         | Johnson      | Schatz     |
| Butler       | Kaine        | Schumer    |
| Cantwell     | Kelly        | Scott (FL) |
| Capito       | King         | Scott (SC) |
| Cardin       | Klobuchar    | Shaheen    |
| Carper       | Lankford     | Sinema     |
| Casey        | Lee          | Smith      |
| Cassidy      | Lujan        | Stabenow   |
| Collins      | Lummis       | Tester     |
| Coons        | Manchin      | Thune      |
| Cornyn       | Markey       | Tillis     |
| Cortez Masto | Marshall     | Van Hollen |
| Cotton       | McConnell    | Vance      |
| Cramer       | Merkley      | Warner     |
| Cruz         | Moran        | Warnock    |
| Daines       | Mullin       | Warren     |
| Durbin       | Murkowski    | Welch      |
| Ernst        | Murphy       | Whitehouse |
| Fetterman    | Murray       | Wicker     |
| Fischer      | Ossoff       | Wyden      |
| Gillibrand   | Padilla      | Young      |

#### NAYS—4

|         |            |
|---------|------------|
| Britt   | Sullivan   |
| Schmitt | Tuberville |

#### NOT VOTING—6

|           |         |          |
|-----------|---------|----------|
| Crapo     | Hawley  | Menendez |
| Duckworth | Kennedy | Sanders  |

The nomination was confirmed.

The PRESIDING OFFICER (Mr. PETERS). Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

#### EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the following nomination, which the clerk will report.

The legislative clerk read the nomination of Seth Robert Aframe, of New Hampshire, to be United States Circuit Judge for the First Circuit.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. HAGERTY. Mr. President, I ask unanimous consent for Senator SCHATZ and I to conclude our remarks prior to the vote.

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

UNANIMOUS CONSENT REQUEST—H.R. 7109

Mr. HAGERTY. Mr. President, last week, the House of Representatives passed the Equal Representation Act. This commonsense bill would require that only U.S. citizens are counted for the purposes of allotting congressional

districts and electoral votes. This makes sense. In order for every American's vote to have equal weight, only legal voters should be counted in apportioning voting power.

On the other hand, the current method of counting illegal aliens in allocating Americans' voting power dilutes the votes of some Americans. It also serves as a perverse incentive for open borders and sanctuary cities because resettling illegal aliens increases the relative political power of the States and the voters that do so.

What was once called a conspiracy theory turned out to be an objective fact that Democrats now acknowledge. Migrants here illegally are being counted in the census, and they are counted for determining electoral college votes and congressional seats. Commerce Secretary Raimondo confirmed this yesterday when I asked her in a committee hearing.

It is impossible to dispute that this policy increases the voting power of districts and States that resettle more illegal aliens. In fact, some Democrats have taken it a step further, calling for more illegal immigration to increase their power. Just this year, video surfaced of a U.S. Representative from New York—her name is YVETTE CLARKE—who said, when asked about illegal immigration, "I need more people in my district just for redistricting purposes." Yes, that is what she said. She said it quite out loud. She represents the same district where James Madison High School is located. You may recall that last fall, last winter, James Madison High School was the school where the students were told to go home and study by Zoom so their school could be used to house illegal aliens. What Congresswoman CLARKE means is that Americans are fleeing blue cities and States en masse because of failing government—and congressional seats are allocated based on population—so if you are losing population, you either have to backfill it or lose congressional seats. That is where the illegal aliens come in.

This Congresswoman's statement helps explain why President Biden and Democrats are allowing recordbreaking illegal immigration. It is to preserve their political power. Since President Biden took office alone, over 10 million illegal aliens have entered our country. That could amount to more than a dozen congressional seats.

This bill is simple. It would simply require that the Census Bureau include a citizenship question to provide a basic understanding of the U.S. population, which is the purpose of the census, and it would allow for delineation between citizens and noncitizens for apportionment purposes. My bill would count only citizens for purposes of congressional and electoral college apportionment. In other words, it would count only citizens for determining citizens' voting power. That way, the power of each American's vote doesn't depend on how many illegal aliens are in their area.

The Equal Representation Act will ensure that the weight of every American's vote is equal, it will restore the one person, one vote principle, and it will certainly end the perverse incentive under which illegal immigration increases political power.

Mr. President, I ask unanimous consent that as in legislative session, notwithstanding rule XX, the Senate proceed to the immediate consideration of Calendar No. 386, H.R. 7109. I further ask that the bill be considered read a third time and passed and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

The Senator from Hawaii.

Mr. SCHATZ. Mr. President, reserving the right to object, a couple of points. The first point is actually the main point, which is that we had the toughest bipartisan bill on border security in generations on this floor, and when Donald Trump found out how tough it was and how effective it was going to be, he told Senate Republicans to kill it, and that is what they did. So spare me the crocodile tears about the situation at the border. We had the opportunity to fix that, and Donald Trump explicitly said: Don't pass this. Blame me. Blame me.

No. 2, my good friend Senator HAGERTY, who feels very passionately about this—his quibble is with the Constitution. The Constitution provides that all persons in the United States are counted—all persons. It says nothing about their citizenship status. So if you have a problem with the way the census is conducted, you have to amend the Constitution of the United States—not the law, not the statutory laws of the United States, but the Constitution of the United States.

I have lost count of the number of times Republicans have tried and failed to add citizenship questions to the census. We have to see this for what it is—an attempt to reduce the count in immigrant communities.

If that sounds like sort of a rhetorical flourish, a little bit too much, let me remind you that it was only a few years ago that the Supreme Court ruled against adding this question. They ruled against it. Why? It is because the real reason they wanted to add it was from a conservative effort who thought it would "be advantageous to Republicans and non-Hispanic Whites."

"[B]e advantageous to Republicans and non-Hispanic Whites."

They wanted to ask people the citizenship question not in a longer census questionnaire, not as part of their annual data gathering, but the first question out of the gate to scare people from interacting with the Federal Government because—listen, someone knocks on your door from the Federal Government, and the first question is "Are you a citizen?" You will decline to participate if you have friends or families or cousins or neighbors who may have mixed-citizenship status.

And here is the other quote, that it "would clearly be a disadvantage for Democrats." This was never about gathering data. This was never about enforcing the law. It has always been and continues to be a pretext to scare people, particularly immigrants, out of taking the census, out of being counted at all, to undercount people and rig the political system in favor of one political party. And don't take this progressive Democrat from Hawaii's word for it; take this Supreme Court's word for it.

I am not a lawyer, but I remember this—I remember they said they had no non pretextual reason to ask that question. In other words, they were asking this question in order to gain partisan advantage.

So for those reasons, I respectfully object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Tennessee.

Mr. HAGERTY. Mr. President, first, I would like to remark that the border security bill that my esteemed colleague references would simply increase the processing of illegal aliens into this country. If this language were incorporated in it, we would stop the incentive for illegal migration. That would be the fix. That was not in the bill. The bill that he referenced would not have addressed the border security at all.

My Democratic colleague is objecting to legislation that would actually restore the one-person, one-vote principle, and it would end the perverse incentive under which illegal immigration increases political power.

It is indisputable that Congress can direct that a citizenship question be included in the census. It was included in the census for most of our history up until Barack Obama's administration took it out in 2010.

And the Constitution says that the census shall be conducted "in such Manner as [Congress] shall by Law direct."

Congress does, indeed, have the authority to do this; in fact, we have had the citizenship question until 2010.

Second, on the question of what population is counted for apportioning House seats and electoral votes, the Constitution says that you count the number of persons in the United States.

It doesn't mean literally everyone in the United States. We don't count people here on vacation; we don't count people here on temporary stays. Why would we count people who are here and who have broken in illegally? It means citizens who are members of the American political body—a body that votes on representation—and who have permanent allegiance to our constitutional system.

In fact, it may be unconstitutional to count illegal aliens under the 14th Amendment because that dilutes some citizens' votes and undermines the principle of one person, one vote.

The constitutional argument is simply a dodge for the indefensible position that opposition to this bill means support for the notion that more illegal aliens should mean more political power for the States and the communities that attract.

#### 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 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, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 460, Seth Robert Aframe, of New Hampshire, to be United States Circuit Judge for the First Circuit.

Charles E. Schumer, Richard J. Durbin, Brian Schatz, Mazie Hirono, Tina Smith, Gary C. Peters, Amy Klobuchar, Raphael G. Warnock, Catherine Cortez Masto, Alex Padilla, Mark R. Warner, Tim Kaine, Sheldon Whitehouse, Martin Heinrich, Christopher A. Coons, Margaret Wood Hassan, Peter Welch.

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 Seth Robert Aframe, of New Hampshire, to be United States Circuit Judge for the First Circuit, 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 Jersey (Mr. MENENDEZ) is necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Idaho (Mr. CRAPO), the Senator from Missouri (Mr. HAWLEY), the Senator from Louisiana (Mr. KENNEDY), and the Senator from Kansas (Mr. MARSHALL).

Further, if present and voting: the Senator from Kansas (Mr. MARSHALL) would have voted "nay."

The yeas and nays resulted—yeas 52, nays 43, as follows:

[Rollcall Vote No. 171 Ex.]

#### YEAS—52

|              |              |            |
|--------------|--------------|------------|
| Baldwin      | Heinrich     | Rosen      |
| Bennet       | Hickenlooper | Sanders    |
| Blumenthal   | Hirono       | Schatz     |
| Booker       | Kaine        | Schumer    |
| Brown        | Kelly        | Shaheen    |
| Butler       | King         | Sinema     |
| Cantwell     | Klobuchar    | Smith      |
| Cardin       | Lujan        | Stabenow   |
| Carper       | Manchin      | Tester     |
| Casey        | Markey       | Van Hollen |
| Collins      | Merkley      | Warner     |
| Coons        | Murkowski    | Warnock    |
| Cortez Masto | Murphy       | Warren     |
| Duckworth    | Murray       | Welch      |
| Durbin       | Ossoff       | Whitehouse |
| Fetterman    | Padilla      | Wyden      |
| Gillibrand   | Peters       |            |
| Hassan       | Reed         |            |

#### NAYS—43

|           |            |            |
|-----------|------------|------------|
| Barrasso  | Graham     | Romney     |
| Blackburn | Grassley   | Rounds     |
| Boozman   | Hagerty    | Rubio      |
| Braun     | Hoeven     | Schmitt    |
| Britt     | Hyde-Smith | Scott (FL) |
| Budd      | Johnson    | Scott (SC) |
| Capito    | Lankford   | Sullivan   |
| Cassidy   | Lee        | Thune      |
| Cornyn    | Lummis     | Tillis     |
| Cotton    | McConnell  | Tuberville |
| Cramer    | Moran      | Vance      |
| Cruz      | Mullin     | Wicker     |
| Daines    | Paul       | Young      |
| Ernst     | Ricketts   |            |
| Fischer   | Risch      |            |

#### NOT VOTING—5

|        |          |          |
|--------|----------|----------|
| Crapo  | Kennedy  | Menendez |
| Hawley | Marshall |          |

The PRESIDING OFFICER (Ms. BUTLER). On this vote, the yeas are 52, the nays are 43.

The motion is agreed to.

The majority leader.

#### UNANIMOUS CONSENT AGREEMENT

Mr. SCHUMER. Madam President, I ask unanimous consent that all time on the Aframe nomination be considered expired and the confirmation vote be at 5:30 p.m. on Monday, May 20.

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

#### LEGISLATIVE SESSION

Mr. SCHUMER. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. SCHUMER. I move to proceed to executive session to consider Calendar No. 599.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Krissa M. Lanham, of Arizona, to be United States District Judge for the District of Arizona.

#### CLOTURE MOTION

Mr. SCHUMER. Madam President, I send a cloture motion to the desk.

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

The senior 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, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 599, Krissa M. Lanham, of Arizona, to be United States District Judge for the District of Arizona.

Charles E. Schumer, Richard J. Durbin, Alex Padilla, Amy Klobuchar, Jack Reed, Tina Smith, Tammy Duckworth, Richard Blumenthal, Robert P. Casey, Jr., Catherine Cortez Masto, Margaret