Your heavenly grace, and give them courage to face perils with trust in You. Give them a sense of Your abiding presence, wherever they may be.

We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF ANDREW VON ESCHENBACH TO BE COMMISSIONER OF FOOD AND DRUGS, DEPARTMENT OF HEALTH AND HUMAN SERVICES

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the nomination of Andrew von Eschenbach, of Texas, which the clerk will report.

The legislative clerk read the nomination of Andrew von Eschenbach to be Commissioner of Food and Drugs, Department of Health and Human Services.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will vote on the motion to invoke cloture on the nomination of the FDA Commissioner, Andrew von Eschenbach. Senators can expect to have this vote around 10:30 to 10:45 this morning, following the 1 hour for debate. As I mentioned yesterday morning, this is a very important position, and to have this confirmation finally being accomplished will be a great achievement for this Congress.

Once cloture has been invoked, we will try to schedule that vote on confirmation early in the day. There are several critical items the Senate must act on before we adjourn sine die, and therefore Senators should adjust their travel plans to be here voting over the coming days.

I will be working with colleagues on both sides of the aisle to wrap up our business for the Congress, and I appreciate Senators' willingness to work together on a number of legislative and executive matters.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

MOVING THE LEGISLATIVE AGENDA

Mr. REID. Mr. President, Andrew von Eschenbach is cleared on this side, so as far as we are concerned there is no need for a cloture vote. We look forward to working with the distinguished majority leader today, maybe tomorrow, maybe Saturday, to try to get as much cooperation out of Senators as possible. I know the finance folks have worked long and hard to try to come up with something that is very important for the country. We will continue to monitor that and do everything we can as we try to move this legislative agenda forward.

PROTECTING AMERICAN VALUES

Mr. FRIST. Mr. President, I will be very brief. I want to speak on another matter. I know we want to get to the hour of pre-vote time here shortly.

Hopefully, tomorrow will officially end the 109th Congress. At the end of the day tomorrow, if we do our work today successfully, and tonight, the Senate will be able to adjourn. That will also mark, once we adjourn, this official change in leadership and change in the Senate agenda. I know many of my colleagues and many of my conservative allies view this change with a bit of trepidation, but change is good, change is constructive. It can be difficult, it can be painful, and it can be messy, but change forces us all to reexamine who we are, where we are, and where we want to go; what we know, what we believe.

I believe it is our responsibility to protect traditional, commonsense American values. I believe when we give the American people the freedom to invest their money as they choose, the economy is going to flourish. It is going to have more freedom to grow. At the end of the day, I believe good leaders don't talk about principles—don't talk about them—but good leaders lead on principle. They act, and they act with solutions, even if they don't know that the outcome is going to be 100-percent successful every time a bill is taken to the floor.

I think that is one of the things that at least I tried to do, is not say let's only take to the floor what will necessarily pass but what is the right thing to do, on principle; what is the right thing for us to be considering.

During my tenure in public office, it is what I tried to do, to lead on principle and act with solutions. It does come from that surgical approach of fixing things, of operating, of action.

For example . . . for 10 years, we grappled with the issue of Internet gambling. We watched the industry mushroom from a $30 million industry in 1996 to a $12 billion industry today. We watched an addiction undermine families, dash dreams, and fray the fabric of a moral society.

So we acted with a solution . . . by passing the Internet Gambling Prohibition and Enforcement Act to provide new enforcement tools to prosecute illegal Internet gambling.

Let me give you a few more recent examples of how we have led on principle, and acted with solutions.

We passed the Adam Walsh Child Protection and Safety Act . . . which creates a national sex offender registry, strengthens measures to prevent child pornography, and reinforces laws against child porn.

We passed the Trafficking Victims Protection Reauthorization Act, which renewed the first federal law to strengthen prosecution efforts against human traffickers.

We passed legislation securing the right to prayer in U.S. military academies.

We passed legislation protecting the Mount Soledad Memorial Cross.

We passed the Broadcast Decency Enforcement Act, which allows for the 10-fold increase of FCC fines for indecency violations.

We passed Cord blood legislation that harnesses the power of stem cells in cord blood to develop new cures for life-threatening diseases.

We passed the Fetus Farming Prohibition Act, which prohibits the gestation of fetal tissue in order to use it for research.

We passed the Stem Cell Research Alternatives bill, which provides federal funding for a variety of stem cell research that do not involve destroying human embryos.

And perhaps most notably . . . we confirmed John Roberts Chief Justice of the Supreme Court . . . and Samuel Alito as an associate Justice of the Supreme Court.

We confirmed 18 Circuit court nominees and 87 District court judges, including six previously obstructed nominees. America needs judges who are fair, independent, unbiased, and committed to equal justice under the law . . . and we made sure that's what America got.

Over the past 12 years, what Republicans have done has changed our economy, our country, and our way of life for the better.

Our record of success, combined with the lessons of November's election, ensures that our party will rededicate itself to serving the interests of America, both here at home and around the world.

That vision—optimistic, forward-looking, hopeful—will be grounded in the fundamentals of commonsense conservative values best found on Main Street and in families with whom we have the privilege of interacting all across the country.

The PRESIDENT pro tempore. Under the previous order, there will be 60 minutes for debate prior to the cloture vote, with time divided as follows: the Senator from Wyoming, Mr. ENZI, or his designee, 30 minutes; the Senator from Iowa, Mr. GRASSLEY, 20 minutes; the Senator from Louisiana, Mr. VITTER, 10 minutes.

Who yields time? The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I rise to discuss the pending nomination of Dr. Andrew von Eschenbach to be the Commissioner of Food and Drugs. The FDA has a very broad and critical mission in protecting our public health. The Commissioner of Food and Drugs is in

charge of an agency that regulates $1 trillion worth of products a year. The FDA ensures the safety and effectiveness of all drugs, biological products such as vaccines, medical devices, and animal drugs and feed. Let me repeat that: the safety and effectiveness of all drugs, biological products such as vaccines, medical devices, animal drugs and feed. It also oversees the safety of a vast variety of food products, as well as medical and consumer products including cosmetics.

As Commissioner of Food and Drugs, Dr. von Eschenbach would be responsible for advancing the public health by helping to speed innovations in its mission areas, and by helping the public get accurate, science-based information on medicines and food. Dr. von Eschenbach has a strong record. He is an accomplished scientist, a proven manager, and a man with a vision. He is also a cancer survivor, and he has brought that perspective, and the compassion that goes with it, to his Government service. He gave up a job he loved, a challenging but rewarding post directing the National Cancer Institute, to offer his service for what I believe is a much more challenging and definitely thankless job of leading the FDA.

The FDA has been without a confirmed Commissioner for all but 18 months of the last 5½ years. Have you ever seen a business that can run for 5½ years without a boss except for 18 months? And that was a tenuous 18 months. I believe we can all agree that we need a strong leader at the FDA now, and one who has a mandate to act. He needs full authority to bring back the morale of the Department and get the job done. We must be forward looking. There are many items before the FDA that require the immediate attention of an FDA Commissioner vested with full authority. But that authority flows directly from the act of Senate confirmation. Without a Senate-confirmed leader, we can't expect the FDA to be as effective as we need it to be. I urge my colleagues to consider this.

I know some of my colleagues on and off the committee are not completely satisfied with their interactions with the FDA during Dr. von Eschenbach's tenure. Some would urge that the Food and Drug Administration move quickly on certain matters before it. However, I am not sure that holding up a nomination over single products or single issues is the right way to achieve faster action and to ensure that agency processes are free from the pressure of politics. In fact, I strongly believe the opposite would occur. I think this is a position that has more Catch-22s than any other position in Government.

I do respect the right of my colleagues to disagree with the President's choice for this position or the policies a President's nominee might pursue. If our disagreements with the President's choice are so strong, we ought to vote against the nominee. But, in light of the trillion dollars worth of drugs and products overseen by the FDA and hundreds of drug approvals reviewed every year, I think we would be setting a dangerous precedent if any of us hold up the President's choice for FDA Commissioner over decisions made involving one product or one issue or something extraneous, even, to the Food and Drug Administration. It would be an especially dangerous precedent at this point.

We have a lot on our plate with respect to the FDA during the 110th Congress. We have to reauthorize both the drug and device user fee programs, address two expiring pediatric programs, and improve our drug safety system.

The FDA needs a leader with the backing and mandate that Senate confirmation provides in order to be our partner in these efforts. Dr. von Eschenbach has received significant support from the HELP Committee. This man could serve patients in many different ways, and has offered to serve them by running this critically important agency. I am talking about a doctor with cancer expertise, management expertise, and vision, who has agreed to run this agency at what we pay because he wants to give back to his country.

I urge my colleagues who are not on our committee to give Dr. von Eschenbach a chance to effectively run the FDA with full statutory authority, so I urge my colleagues to accept the President's nominee, Dr. Andrew von Eschenbach, and vote to confirm him as the next Commissioner of Food and Drugs. Voting yes on this cloture vote will be the first step voting on a permanent head to oversee our Nation's food and drug system.

I reserve the remainder of my time.

The PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, my opposition to the cloture motion is as much about whether we are going to be able to fulfill our constitutional responsibilities of oversight of the administrative branch of Government as it is about the particular qualifications of the nominee. I intend to vote against cloture and I hope that Democrats who are listening—particularly those Democrats in the last election who were bellyaching because there wasn't any oversight on the part of Republicans toward the executive branch of Government—would pay attention to the fact that this nominee has something to do with and is an illustration of the lack of cooperation on the part of the executive branch, failure to cooperate with Congress on the issue of congressional oversight.

I have serious concerns about what this cloture vote means, then, to congressional oversight of the executive branch now and in the future, and what it means for Members such as me, who placed a hold on this nominee. This was not a secret hold. I made this hold public.

I am voting against cloture and ask my colleagues to join me because I believe we need to send a message to the executive branch that it is not OK to impede congressional investigations. It is not OK to limit the Senate's access to documents, information, and employees of the executive branch. In his book on congressional government, Woodrow Wilson, before he was President, when he was a professor at Princeton, wrote, in 1885: ''Quite as important as lawmaking is vigilant oversight of the administration.''

Our work as lawmakers does not end with the passage of a bill. This body has a responsibility to the American people to make sure that laws work and that they are being implemented effectively, efficiently, and economically. Congressional oversight serves very important goals, and we should not lose sight. They include reviewing actions taken and regulations adopted by executive agencies to make sure that the agencies are executing law according to the intent of Congress, and, second, ensuring that the Federal Government is not wasting taxpayers' dollars. Oversight work allows us to evaluate the ability of agencies and managers to carry out program objectives and improve the efficiency, effectiveness, and economy of Government programs; next, ensuring that executive policies reflect the public interest and that public interest is expressed in the laws of Congress; and, lastly, protecting the rights and liberties of the American people.

Woodrow Wilson also said in his book that:

> It is the proper duty of a representative body to look diligently into every affair of Government and to talk much about what it sees. It is meant to be the eyes, the voice and embody the wisdom and the will of its constituents.

In America, with our Government, the public's business ought to be public. But when you have coverups and the lack of information going to Congress, as demonstrated by this request for documents, and when we get a document back with practically 57 pages removed, what is in those 57 pages that we ought to have access to? That is just one example of lack of information and the lack of cooperation from this agency.

Throughout history, Congress has engaged in oversight of the executive branch. The right to congressional oversight has been asserted from the earliest days of our Republic. In 1792, the House invoked its authority to conduct oversight when it appointed a committee to investigate the defeat of General St. Clair and his Army by Indians in the Northwest and empowered the ''call for such persons, papers, and records as may be necessary'' for that inquiry.

In fact, the Constitution grants Congress extensive authority to oversee and investigate executive branch activities.

Congressional oversight was also recognized explicitly in the passage of the Legislative Reorganization Act of 1946,

which required the standing committees of Congress to exercise continuous watchfulness over programs of agencies in their jurisdiction. Numerous Supreme Court decisions will support all the precedents for Congress to see all aspects of the Federal Government.

In 1927, in McGrain v. Daugherty, the Supreme Court upheld congressional authority to conduct oversight of the Teapot Dome scandal. Justice Van Devanter writing for the unanimous Court stated:

> We are of the opinion that the power of inquiry with the process to enforce it is an essential and appropriate auxiliary to the legislative function.

To do oversight, Congress needs access to information and people in the executive branch. And that is what I did not, and still may not, be getting from the FDA under the leadership of Dr. Von Eschenbach—as an example, 47 pages removed; another example, 43 pages removed.

How are you going to conduct oversight when you get answers such as that from the Food and Drug Administration?

I take exception to the statement made in support of the cloture motion. People ought to be ashamed of saying Dr. Andrew von Eschenbach has done a superb job in the position he is currently occupying with an answer such as that to the Congress of the United States. That is an insult. Before you cast your vote in favor of cloture, consider what is at stake—and particularly Members on the other side of the aisle who, during the campaign, in campaign commercial after campaign commercial after campaign commercial, said Congress is not doing its job of oversight, implying that Republicans were covering up wrongdoing by the administration. If you want to preserve your access to information and do the oversight that you think you are going to do, when you are in the majority and you get answers such as that, do you think you are going to be able to do the job of oversight?

In my interactions with the Department of Health and Human Services and the FDA these last 8 months, I have seen a complete and utter disrespect for congressional authority and hence the law. The department and the Food and Drug Administration have repeatedly failed to act in good faith in responding to congressional investigations—and the lack of 43 pages is just one example.

Although the Director's leadership at the FDA has failed to fully comply with two congressional subpoenas that were issued 7 months ago, efforts to accommodate the agency's concerns fall on deaf ears, and I wonder if I am dealing with dysfunction by design. Not only has the NEDA withheld documents that do not appear to be privileged, but it also says what has been withheld and why. The subpoenas compel a privilege log, but the FDA has not provided us with that privilege log.

For Democrats in the majority next year doing the oversight that they said they were going to do because Republicans weren't doing it—they didn't let me—let me ask you this: Are you going to be able to conduct oversight when you get answers such as that? Are you going to be able to conduct oversight when, for 7 months, you don't get your subpoenas responded to? What is the agency's explanation? The FDA has said that many documents have been withheld, that it is unduly burdensome to provide a privilege log. Even in the FDA, general counsel, as recently as Tuesday of this week, could not see why the agency needed to comply with the law and the terms of the subpoena which was issued by the committee.

In denying the committee access to the documents responsive to the subpoena, which the department and the FDA administration have claimed ''prosecutorial deliberative process'' or ''confidential communications'' or ''agency prerogatives'' to determine who will be interviewed and testify before a jurisdictional committee, when those on the other side of the aisle get answers such as that when you are going to be in the majority, what are you going to do about it? Are you going to keep your commitment to the American people when you won the majority? And are you going to be able to do the oversight when you get rationales such as ''prosecutorial deliberative process'' or ''confidential communications'' or ''agency prerogatives?''

I could not talk to a line agent named West because you can't talk to line agents, when 3 months before I talked to line agents? There was someone from the Justice Department before the Judiciary Committee, when Senator KENNEDY said, ''I want access to line agents,'' unrelated to what I am talking about: Line Agent West, whom I wanted to talk to and I was told I couldn't talk to because you can't talk to line agents, the official at the Justice Department said to Senator KENNEDY:

> You can talk to line agents. We will get them for you.

I do not know whether that ever happened. But that was the answer.

When I went around doing my questioning of Justice Department officials, I said: What about my ability to talk to Line Agent West? It just seemed as if I was going to be able to talk to Line Agent West. But yet this very day the Justice Department is advising the Secretary of the Interior that we can't talk to Line Agent West, which is key to whether some of these investigations are allowing dangerous drugs on the market. In Cedar Rapids, IA, I have a family that lost an 18-year-old because of a drug that was on the market then and which is not on the market now.

It seems to me that if you are concerned about the safety of drugs, this information is important, and if you are going to have it covered up in the FDA, you aren't protecting the public. If Congress knows about it, you are not doing your job of oversight.

This past summer I asked the Congressional Research Service to look into the department's policies regarding this matter. And the Congressional Research Service told me that there is ''no legal basis'' for the department's executive branch assertion. The legal analysis provided by Congressional Research Service supports the committee's position that these executive agencies' claims have been consistently rejected and compliance with congressional requests in the past has been forthcoming. The CRS cites numerous court cases which establish and support Congress's power to engage in oversight and investigate activities and its access to executive branch personnel and documents in carrying out our powers of oversight.

The Department of Health and Human Services, the FDA within Health and Human Services, says it has been responsive because the agency made available hundreds of thousands—even millions—of pages of documents to the Finance Committee in response to its subpoena. But the agency can give me all of the books and all the documents housed at the Library of Congress and it won't matter if it is not what I have asked for and the pages are removed.

It is this type of cooperation that I am getting under this Director that you are now going to confirm. I am very concerned about the cooperation, if any, that we have once he becomes a permanent commissioner. Every Member of Congress should be equally concerned if they take their constitutional duty of conducting oversight of the executive branch seriously, and most importantly to the new majority when you are going to carry out your campaign promises to make sure that there is proper oversight, checks and balances against an executive branch of Government you think is exceeding authority. Every Member should be concerned. I cannot emphasis this enough.

A vote for cloture today is a vote against oversight, and that is not what this Senate should be doing. It is not what the American people sent us here to do. We need to step up congressional oversight to protect our Nation's system of checks and balances and not reward those who seek to impede our constitutional authority.

This body should not walk hand in hand with the executive branch and sit idly by as instances of abuse and fraud continue to endanger the health and safety of American people. This Senate needs to make it clear to the executive branch that Congress takes its oversight responsibilities seriously and to vote against cloture. If we do have cloture, I will have other remarks during postcloture debate.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Wyoming.

Mr. ENZI. Madam President, I want to briefly comment.

I understand the frustration. I have been working with him trying to get documents, trying to get the interview

with Mr. West. I want you to put yourself in Dr. Von Eschenbach's position. He has not been confirmed. He does not have the full authority to run that department. So what he has to do is rely on the Department of Justice, as the Senator mentioned. The Department of Justice tells him what he is supposed to do. I don't think he has authority to go beyond what the Department of Justice says.

The Senator is one of the most diligent Members to hold oversight hearings of anybody that I know. I appreciate the depth that you go to for individuals as well as groups. I know it is what you are doing on this one. Unless we give him full authority, he has to rely on the Justice Department. The way one has to take on the Department of Justice is through the Judiciary Committee and bring them to task for giving him that kind of advice. I think he is just following the advice he has gotten from those he has to rely on until he has authority. I think it will be different when he has full authority.

I yield 2 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, during my time of almost 7 years as chairman of the Appropriations Committee, I have met with Dr. Von Eschenbach quite often. We had many requests for documents. I can't remember once that he refused. But beyond that, I came to the floor today to say that I have gotten to know Dr. Von Eschenbach personally, and I can't think of a more qualified man at this time to be confirmed to this position. I hope the Senate will vote cloture and we will confirm Dr. Andrew von Eschenbach as requested by the President. I thank the Chair.

Mr. ENZI. Madam President, I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I thank Senator ENZI for giving me this time. I am pleased to rise to support Dr. Andrew von Eschenbach's nomination for Commissioner of the Food and Drug Administration. I am speaking about a person whom I know. I know him as a person. I know him as a human being. I can say, with full confidence, there is no one more qualified and more well suited to lead this very important agency.

I was very pleased the committee overwhelmingly, unanimously, supported his nomination. Not only is Dr. Von Eschenbach a wonderful friend of mine, but he is so qualified for this position. His experience and integrity make him the right choice to lead the FDA.

He is a nationally recognized urologic surgeon, medical educator, and cancer advocate. He is a three-time cancer survivor. There is no one who can understand what it is like to go through a fight against cancer than someone who has done it. So many doctors haven't had that experience, one might not get the impression that they really understand what a patient is going through. Not Dr. Andy von Eschenbach. He has been through the hard time of being told he has this dreaded disease and fighting it with all his might. He does relate to patients' struggles.

During his 25 years at the University of Texas M.D. Anderson Medical Center, he led a faculty of 1,000 cancer researchers and clinicians. He was the chief academic officer at this great cancer institution. He was also the founding director of M.D. Anderson's Prostate Cancer Research Program. In this position, he developed integrated programs to study, treat, and prevent prostate cancer. Before arriving at M.D. Anderson, he served his country as lieutenant commander in the U.S. Navy Medical Corps from 1968 to 1971. In 1976, he joined M.D. Anderson as a urologic oncology fellow. He became part of the faculty and was named chairman of the Department of Urology in 1983.

When he left M.D. Anderson in 2002, he became Director of the National Cancer Institute. At the time, he was president-elect of the American Cancer Society which, of course, is one of the leading organizations in our country that fights for victims of cancer.

He has, also, been published in more than 200 publications. This year, Time Magazine named Andy von Eschenbach as one of the 100 people who shape our world.

The FDA is fortunate to have Dr. von Eschenbach. It is one of the Nation's oldest and most respected consumer protection agencies. It regulates $1 trillion worth of products available to American consumers, and it makes sure the products are safe and effective.

Dr. Von Eschenbach is the right person to lead the FDA's mission. I completely trust him. I cannot think of a more qualified candidate. I hope we will put politics aside in this very important nomination and we will confirm this very qualified individual. He is balanced. He has good judgment. He will continue to be a cancer advocate as well as a patient advocate.

He knows, also, from the FDA standpoint, of the issues involved with the drug approval process—that products face extensive testing and studies compared to other countries. I have talked to him about this. Of course, their first and foremost responsibility is safety. That is why they have this arduous and comprehensive process of approving drugs.

On the other hand, he also knows you need to make drugs available for patients who otherwise may not survive. He realizes these concerns from every angle. He knows it from the research angle, from the academic angle, from the Government angle, and from the patient advocate angle.

It would be a tragedy if we did not give him the full authority and the full congressional confirmation he deserves. He deserves it because he left the private sector at a world renowned cancer research institution to serve his country and the responsibility it takes in a high public policy position.

Sometimes I wonder how we attract such qualified academics and people who are not experienced in this arena. They are not used to the compromise of politics. They have been researchers and in academia all their lives. They come into public service and all of a sudden they are hit with the public exposure and scrutiny. Sometimes they are unfairly characterized in a way they never dreamed.

Yet we have someone of the caliber of Andy von Eschenbach willing to take all of that to do something better for our country and for cancer patients in the country and in the world. We owe him the ability to have this position without any further delay, with the complete imprimatur of the Senate as well as the President of the United States. He deserves it.

I hope our colleagues will look at this, not from a political prism but from the standpoint of a qualified individual who is trying to help medical research and safety in this country go forward, who is a patient advocate, first and foremost.

I thank Senator ENZI and Senator KENNEDY for working together to bring this nomination to the Senate. We should have a bipartisan vote in confirming Dr. Andrew von Eschenbach.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, I rise today to speak against the cloture motion to confirm Dr. Andrew von Eschenbach as Commissioner of the FDA. I have had a public hold on this nomination and have been very upfront about it. Because my serious concerns have not been addressed in any significant way, I will vote against cloture. If cloture is invoked, I will vote against the nomination.

In doing so, I want to be clear I have nothing against Dr. Von Eschenbach's technical credentials or professional experience. They are very impressive in many ways. I strongly object to this nomination because the FDA and Dr. Von Eschenbach, acting on orders from the administration, has had a complete and utter lack of action creating a reasonable, safe system for reimportation of prescription drugs from Canada and elsewhere.

Clearly, this nomination making him the permanent head of the FDA will only further delay that reasonable implementation of a good, safe reimportation policy. In fact, at my extensive meeting with Dr. Von Eschenbach, my discussion with him made that perfectly clear. I give him credit, I suppose, for being very direct about that, although I am not sure he fully understood my serious interest in reimportation. It is for this reason I will vote against cloture. If cloture is invoked, I will vote against the nomination.

The FDA is completely capable of setting up a reimportation system, one that is safe and effective. The FDA can do this. It is not a matter of technical ability. We have great technical and other resources in this country. It is a matter of political will. At any time, the FDA could act and set up this safe and reasonable system.

My hold on this nomination, as I said, was very public, upfront, and clear. I made it clear I would lift it, contingent on a very simple request to implement some sort of prescription drug reimportation plan—perhaps beginning with personal reimportation from Canada, including Internet and mail order sales. The FDA could do this. It is fully capable of doing this. It has the know-how to do this. It simply will not because of lack of political will.

The need for this is very obvious to me. Every time I talk to consumers in Louisiana, particularly seniors, it becomes more and more obvious. As obvious and as important is the growing support for this—not just out in the country where that support has always been strong but in the Congress, in the Senate, in the House.

The House passed comprehensive drug reimportation language in 2003. It passed it by an overwhelming majority. More recently, the Senate passed my amendment coauthored by Senator BILL NELSON of Florida by a vote of 68 to 32. That was this past July. That was a significant breakthrough because it was the first time we had a meaningful, straight up-or-down vote on a reimportation issue in the Senate. Again, the vote was clear. It was overwhelming. That important amendment passed 68 to 32.

All this shows that the majority of Americans strongly support allowing all Americans to purchase safe, cheaper prescription drugs from Canada and elsewhere. Yet the administration absolutely refuses to budge. Not only does the administration refuse to budge, it even went so far as to quietly implement a new policy last year at U.S. Customs and Border Protection to go after individual American citizens crossing back into the United States from other countries—mostly Canada—with medicine, actually seizing their packages containing legal medication at those border checkpoints. That is a very high-handed policy, when these citizens are doing nothing but trying to get absolutely necessary prescription drugs at a reasonable cost.

Coupled with the FDA and the administration's stubborn reluctance to implement even the most modern program, this has led me to conclude that no change would be made with the confirmation of this nominee.

Again, this is an issue of utmost importance to every American family and, of course, it particularly impacts seniors. I talk to affected families and affected seniors in Louisiana about this all the time. They tell me, at a time when pharmaceutical companies are making record profits, the costs of prescription drugs are still skyrocketing and the very same medicines usually manufactured by the very same companies are sold at a fraction of the costs a few miles north of the border in Canada or in other countries around the world. Louisianians see that and they are very skeptical. They should be. I share that attitude. I share that skepticism.

Opposing the right of an American to buy prescription drugs, FDA-approved medication they intend to use for themselves, is a wrong policy. We pay the highest prices in the world for prescription drugs in America. Our prices subsidize not only rockbottom prices in almost every other country but also sky-high and escalating profits of the pharmaceutical companies. That is not fair. That should not be allowed to continue. That is why we need to pass this important policy of reimportation.

Many of my colleagues have spoken about this significant issue in the Senate.

In September, my colleague from Michigan spoke of her bus trips with her constituents to Canada where they were able to buy safe, FDA-approved drugs at a fraction of the U.S. cost: Lipitor, a very important cholesterol-lowering drug, for 40 percent less; Prevacid, an ulcer medication, for 50 percent less; antidepression medications such as Zyprexa for 70 percent less.

In June, my colleague from North Dakota spoke eloquently about the need to allow the reimportation of safe drugs as a way to pressure U.S. pharmaceutical companies to lower prices here. That is the key, not just offering this option of cheaper drugs from another source but breaking up the present system that allows companies to charge dramatically different prices for the same drug around the world. And, of course, the highest prices in the world by far are right here in the United States. That system will not be able to withstand reimportation. That system will fall with reimportation.

So that is why I continue this fight. That is why it is so important. Although certainly this nominee may very well be confirmed by the Senate today, I am very optimistic that, as we make progress on this issue, we march to a very certain victory, probably next year, on the issue.

Again, we have been making steady progress. My amendment this past summer—the first vote on the floor of the Senate—was a breakthrough vote that showed overwhelming support here on the floor of the Senate for reimportation. Previous House votes, similarly, showed not just majority support, overwhelming support for this change in policy. Just recently, I again joined with Senator BILL NELSON of Florida to put up another important amendment to the Agriculture appropriations bill that would go a step further. We will continue to pursue that. Then, next year, I fully expect a full-blown reimportation plan to be here on the floor of the Senate for a full debate and a fair vote.

So as I oppose cloture, as I oppose this nomination, I do so in that spirit and with real optimism that we are not only making progress, but we will, in fact, win on this issue in the near future. Next year, I expect my bill to be fully debated. In this Congress, that bill is S. 109, the Pharmaceutical Market Access Act. I believe it will reach the floor and will get a full debate with other significant bills on the issue next year.

I look forward to that continued progress. I look forward to that ultimate victory because Americans, particularly seniors, all across our country, including in Louisiana, need this very important relief. We can give them this relief in a safe, reliable way to dramatically bring down prescription drug prices.

With that, I yield back the floor.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Wyoming.

Mr. ENZI. Mr. President, I wish to acknowledge the intense, enthusiastic, and persistent work of the Senator from Louisiana, Mr. VITTER, for drug importation. I do not know that I have seen anybody lead as much on an issue or work as hard on an issue. Around here, that is a talent which is very much appreciated.

I do want to mention that, again, Dr. Von Eschenbach has not been confirmed, so he does not have full authority to run the Department or to do what he would like to do or might need to do. He has to rely on the advice of other people, particularly until he is confirmed. After that, even then, he will have to abide by the laws.

I would point out that drug importation is illegal right now, and it is Congress, not the FDA, that has determined that. So until we change the law, until we do some or all of the things the Senator from Louisiana is suggesting, Dr. Von Eschenbach would really be stepping out of bounds to do drug importation. So I hope we do not hold that against him or hold up his nomination for that reason. We should hold him accountable for what is within his control, but urge him to work with Congress.

I have had dozens of meetings with him on a variety of issues, as Senators have brought them up. Most of them have been resolved. Those within the law, those the Department of Justice has not contested, have been resolved.

Mr. VITTER. Will the Senator yield very briefly?

Mr. ENZI. Yes.

Mr. VITTER. Just very briefly, first of all, I appreciate your kind comments. Very briefly, my comments regarding his and FDA's ability to move forward on this is based on current law, including the Medicare Modernization Act, which says that if they institute a safety regime and certify the safety of these drugs, they can, in fact, move forward with the reimportation regime.

So under present law, that is possible, and that is what I was referring to. But I respect the Senator's point of view.

Mr. ENZI. I appreciate that comment. If you were a person who was in a catch-22 position, a very qualified doctor, and you really wanted to do a good job with FDA and you knew that half the people or a third of the people or even 10 percent of the people did not want drug importation and you were the guy in charge of maybe making this determination for the first time—even though 6 or 8 years previously Congress had opposite opinions on it—I do not think you would want to put yourself in that position.

He has just had a number of catch-22 positions where he can irritate half or more of us by making a decision, and nobody is going to make a decision in their confirmation process that way.

It is actually the Health and Human Services Secretary who has to certify under the new law as well.

So I hope we can get him confirmed and then do the kind of oversight we need to do to make sure he does everything that is possible to make sure we have safe food and drugs.

Mr. President, I yield up to 10 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I did not plan to talk about drug reimportation, but coming on the heels of this conversation, I simply want to make this one observation: The key statement made by the Senator from Louisiana was safe drug reimportation. And the key problem here is certifying that the drugs coming across the border—after they have been sent and then are reimported are, in fact, the same drugs, they are, in fact, safe.

The Congress has said the drugs can be reimported back into the United States as soon as the Secretary can certify that they are, in fact, safe. I have seen the sample runs, if you will, that have been made on this issue. They have found again and again that a certain percentage of the drugs coming back are, in fact, not drugs manufactured in the United States. They have been manufactured elsewhere, packaged in Canada or Mexico or wherever, and then sent back to the United States fraudulently, as if they were, in fact, the original drugs.

Now, they have not yet killed anybody that I know of. They are not so unsafe that they have, in fact, poisoned anybody. Overwhelmingly, the history has been that the dosage in the drugs is simply not the same as advertised in the drugs manufactured in the United States. They have traces of whatever the drug might be in the fraudulent packages, but the dose control is not the same, and it is dangerous to the individual taking the drug if he or she assumes they are getting a certain dosage and, in fact, they are getting less.

That has been the challenge. That has been the problem. And until the Secretary of HHS, be it Donna Shalala or Michael Leavitt, can come forward and certify that all of these are, in fact, as advertised, it is the law that they cannot be brought into the United States. I think that is an appropriate law protecting people in the United States.

I agree with the Senator from Wyoming that it really is not appropriate to hold up Dr. Von Eschenbach's confirmation on this issue because it has to be decided by the scientists and those who are doing the sampling of the shipments rather than the head of the FDA.

I have gotten to know Dr. Von Eschenbach as the chairman of the Agriculture Appropriations Subcommittee. You usually think of agricultural appropriations in terms of crop supports and USDA activities. But for whatever reason, in its wisdom, Congress at one point put jurisdiction over the Food and Drug Administration into that subcommittee. So, if you will, I have been in the position of dealing with this man as he has come begging.

As we are in the Appropriations subcommittees, everybody who has responsibility over which we have control comes begging; that is, they come asking for things, they come outlining their position, and they come describing what they will do with the money. All of us who have been on the Appropriations Committee have had this experience with a wide variety of people from the executive branch. I have never seen anyone who has come before our subcommittee better prepared, with a better understanding of how the money will be spent, and with more vision as to where the money ought to be spent to take the agency into the future than Dr. Von Eschenbach.

We have not just sat and discussed budget issues; we have not just sat and talked about dollars and cents—what are you going to spend here and what are you going to spend there—he has outlined for me in our conversations where he thinks the FDA of the future ought to be and what it will cost to get it there.

I have been very struck and impressed by his vision for the FDA. This is not a man who is content to simply superintend what he has on his plate. This is a man who has the capacity to look to the horizon, and maybe even over the horizon, to see where America ought to be.

In the practice of medicine right now, drug therapy is the cutting edge. Yes, we are developing new operations. We are developing new surgical procedures to try to push the envelope out further as far as health care is concerned. But the major breakthroughs are coming through drug therapy. There are all kinds of situations now where it can be handled with drug therapy that obviates the need for an operation or any kind of surgical intrusion. The implications of that are huge, and the role of the FDA in that kind of medical revolution of the future is paramount. We absolutely have to have at the head of the FDA, in that kind of revolution, a man who is visionary, a man who looks to the future, and a man who understands the potential that lies in the area which he superintends.

Dr. Von Eschenbach, I am convinced, is such a man. I have his resume. We have heard it outlined here. It is an outstanding resume. But people with good resumes can come before us all the time and, in fact, have no vision. They spend their time tending what is on their own plate. This is a man with vision. This is a man who sees what can happen and who desperately wants to take the FDA in that direction.

He said to me: Senator, I don't feel that I can institute these kinds of long-term changes as long as I am acting. I feel—I think appropriately, from my point of view—that I cannot make these kinds of structural changes in FDA's mission and direction until I have the imprimatur of the U.S. Senate and full confirmation.

The longer we hold up his nomination, the longer we keep him from being confirmed, the longer we will wait for that kind of vision to be established in that agency. I think we have waited too long. I salute the majority leader for his persistence in bringing this nomination to the floor. At this time, with all the other things we have to do before this Congress comes to an end, this is one he could easily have put off. I am grateful that he did not. I am grateful that he filed a cloture motion to hold our feet to the fire on this one and say: It is time for us to act. It is time for us to give this man the imprimatur of our confirmation vote so he can move forward, he can infuse the agency with the kind of vision and excitement that I know he has.

I have spent enough time with him, I have had enough conversation with him—have talked to his peers outside of the agency to know that the President has made an outstanding choice in Dr. Von Eschenbach. We as a country would be well served to have him in this place, and I urge the Senate to invoke cloture and confirm this nomination as quickly as we possibly can.

Mr. HATCH. Mr. President, to me it is simply unconscionable that the Food and Drug Administration, one of the best little agencies in Government, has gone leaderless for such a period of time.

Here we have an agency that governs, by some estimates, 25 cents out of every consumer dollar, and yet we treat it as a stepchild. We do not provide it with the funding it needs. We allow it to exist without a confirmed commissioner for months and months on end, for repeated periods. And yet we expect it to be the vital consumer watchdog agency it was intended to be.

When you think about what this agency does, what the daily business of the FDA is, you can see how dire the situation really is.

This is an agency that makes certain the drugs and medical devices we use

are safe and effective, that the cosmetics, dietary supplements, and over-the-counter medications we count on are sold safely, with truthful and nonmisleading claims. This agency regulates animal drugs and radiological devices and so much more. Yet, time after time, it does without a confirmed commissioner. And this is the absolutely wrong time for that to happen.

Think about the key FDA issues we are facing: the safety of the food supply, how to improve drug safety, instituting a new system of mandatory adverse event reporting for serious events associated with the use of dietary supplements and nonprescription drugs, extending the user fee programs for drugs and devices, and the incentives for pediatric drug testing—and I have named only a few of the issues. We are facing all these pressing public policy issues, and yet we expect the agency to do its job without a confirmed commissioner. That is not right. It is simply not right.

The President has nominated a well-qualified, more-than-capable medical doctor to the position of Commissioner of Food and Drugs.

I know Dr. Von Eschenbach well. He is a man of integrity. He is a good manager. He is a good listener. He knows the importance of working well with Congress, and I believe he will work well with us.

I urge my colleagues—no, I implore my colleagues—to do what is right and vote to invoke cloture on this nomination. It is what Dr. Von Eschenbach deserves. It is what the agency deserves. And it is what the American people deserve.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Utah for his delightful comments. He speaks so clearly and explains things so well. I know of his contacts with Dr. Von Eschenbach. I hope people will follow his advice and vote for cloture.

Dr. Von Eschenbach's qualifications are excellent. He is supported by many organizations. We had received a number of letters in support of his nomination prior to his confirmation hearing. Those were duly entered in the hearing record. However, since then we have received additional letters of support.

I ask unanimous consent that those letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OMERIS,
Columbus, OH, August 2, 2006.

Hon. MICHAEL B. ENZI,
Chairman, Committee on Health, Education, Labor and Pensions, Dirksen Senate Office Building, Washington, DC.

Hon. EDWARD M. KENNEDY,
Ranking Member, Committee on Health, Education, Labor and Pensions, Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN ENZI: On behalf of Omeris, Ohio's bioscience membership and development organization, and our member companies, I am writing in support of the nomination of Dr. Andrew von Eschenbach to be Commissioner of the Food and Drug Administration.

Dr. von Eschenbach is an excellent choice to head the FDA. He has an outstanding career as a physician, researcher, and administrator in both the public and the private sectors. As a physician, he has treated cancer patients for almost thirty years. As a researcher, he has published more than 200 articles and books and was the founding director of M.D. Anderson's Prostate Cancer Research Program. As an administrator, he has served as the president-elect to the American Cancer Society.

It is critically important to our industry and to the nation that the position of the FDA Commissioner be filled. Strong leadership is essential if the FDA is to most effectively fulfill its mission of assuring the food Americans eat is safe and healthful, that the drugs they take are safe and effective, and that the medical devices they rely on for cures and treatment are safe and effective and represent the latest and best that our industry can offer. Experience has shown that a permanent director continued by the Senate is necessary to assure that the agency has the authoritative leadcrship it needs to respond promptly and effectively to all the challenges it faces.

Prompt confirmation of Dr. von Eschenbach is especially important in view of the issues that are currently facing the FDA. Next year, both the medical device and drug user fee programs must be renewed by Congress, and the agreements between industry and the FDA that will be the starting point for the reauthorization are being negotiated right now. The critical path initiative, which offers so much potential for speeding the development and approval of safe and effective products) is just getting off the ground and needs a strong advocate. The challenge of determining how FDA can most effectively conduct postmarket surveillance to assure the safety and effectiveness of approved products is an issue that needs strong leadership from the top. The continuing challenges of food safety and preparation for a pandemic or bioterrorist attack need a strong FDA voice.

Omeris members, Ohio's bioscience companies, help revitalize our state's economy while developing critical tools, treatments, and technologies that benefit the world. Omeris is a focal point for the bioscience and biotechnology community, providing networking and educational events, continually developing web-based resources, addressing public policy, and analyzing resource and funding issues.

We respectfully urge you to support Dr. von Eschenbach's prompt confirmation. Thank you for considering this request.

Sincerely,

ANTHONY J. DENNIS,
President & CEO.

NEW YORK STATE
CANCER PROGRAMS ASSOCIATION, INC.,
Buffalo, NY, August 3, 2006.

To: Senate Health, Education, Labor and Pensions Committee.

From: Dr. Edwin A. Mirand, Secretary-Treasurer, NYSCPA.

Subject: Nomination of Dr. Andrew von Eschenbach as Permanent Commissioner of Food and Drug Administration.

The New York State Cancer Program Association, Inc. supports the nomination by President Bush as permanent Commissioner of Food and Drug Administration (FDA) Dr. Andrew von Eschenbach.

Dr. von Eschenbach's experience as a researcher and physician will provide the FDA with a better focus to confront the challenges and new opportunities facing the agency. Dr. von Eschenbach will lead the agency and strengthen the credibility of its decision-making process.

EDWIN A. MIRAND,
Secretary.

THE AMYOTROPHIC LATERAL
SCLEROSIS ASSOCIATION,
Washington, DC, July 24, 2006.

Hon. MICHAEL ENZI,
Chairman, Health, Education, Labor and Pensions Committee, U.S. Senate, Washington, DC.

Hon. EDWARD KENNEDY,
Ranking Member, Health, Education, Labor and Pensions Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN ENZI AND RANKING MEMBER KENNEDY: The ALS Association strongly supports the nomination of Andrew von Eschenbach, M.D., to be Commissioner of the Food and Drug Administration and we urge the Committee to favorably report the nomination to the full Senate.

The ALS Association is the only national voluntary health association dedicated solely to the fight against Amyotrophic Lateral Sclerosis (ALS), more commonly known as Lou Gehrig's disease. Our mission is to improve the quality of life for those living with ALS and to discover a treatment and cure for this deadly disease.

We believe that strong leadership at the FDA is essential so that the Agency can fulfill its mission and not only ensure that drugs and medical devices are safe and effective, but also that people have timely access to the latest medical technologies. This is especially important for people with ALS, for there is no known cause or cure for ALS, and only one drug available to treat the disease. That drug, approved by the FDA in 1995, provides only modest benefits, prolonging life by just a few months.

Dr. von Eschenbach would provide the vital leadership that is needed at the FDA. Moreover, his diverse background as a physician, educator and advocate will be a tremendous asset to the Agency and to the Nation, for he can view the Agency's mission from many different perspectives and help to foster the collaboration that is so important to advancing medical science and quality health care.

The ALS Association is pleased to offer our strong support for this nomination and again urge the Committee and the Senate to support Dr. von Eschenbach as the next Commissioner of the Food and Drug Administration.

Sincerely,

STEVE GIBSON,
Vice President,
Government Relations and Public Affairs.

CANCER CURE COALITION,
Palm Beach Gardens, FL, August 25, 2006.

Senator MICHAEL B. ENZI,
Chairman, U.S. Senate Committee on Health, Education, Labor and Pensions, Washington, DC.

DEAR SENATOR ENZI: The Cancer Cure Coalition is supporting the nomination of Dr. Andrew VonEschenbach as commissioner of the U.S. Food and Drug Administration and we have today issued a press release announcing our support. Attached is a letter from the coalition to Dr. VonEschenbach which gives the reasons for our support.

The Cancer Cure Coalition supports changes at the FDA which will improve its operation. We believe the appointment of Dr. VonEschenbach will lead to that result. If it would help your committee in its decision on Dr. VonEschenbach's appointment I would be pleased to appear before the committee to testify. My bio appears on the Cancer Cure Coalition's website

www.cancercurecoalition.org and I am attaching a copy of it for you to review.

If you need any further information please feel free to contact me.

Sincerely,

CHARLES A. REINWALD,
President.

Mr. ENZI. Those letters are from Omeris, Ohio's bioscience membership and development organization; the New York State Cancer Association; the ALS Association; the Cancer Cure Coalition, and there are others. These groups recognize the absolute necessity of having a Senate-confirmed Commissioner of Food and Drugs. I understand some of my colleagues are not satisfied. They seek to use this nomination as leverage to accomplish some other agendas. That is something you can do in the Senate. However, I urge them to consider the consequences of those actions. In the upcoming year we face an exceptionally full agenda with respect to the FDA. We need this man in place. This man could work anywhere in America, probably anywhere in the world, and do much better than what we are offering.

I appreciate his sense of wanting to give back. He is a three-time cancer survivor and understands a lot about food and drugs outside of being a doctor.

I ask my colleagues to join me in getting cloture so that we can get the confirmation accomplished.

I yield back the remainder of our time.

The PRESIDING OFFICER. Who seeks time?

Mr. ENZI. It is my understanding that the previous speakers did yield their time back. So all time is yielded back.

CLOTURE MOTION

The PRESIDING OFFICER. If all time is yielded back, under the previous order, pursuant to rule XXII, the clerk will report the motion to invoke cloture.

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, do hereby move to bring to a close debate on Executive Calendar No. 907, the nomination of Andrew von Eschenbach, of Texas, to be Commissioner of Food and Drugs, Department of Health and Human Services.

William H. Frist, Michael B. Enzi, Richard Burr, Thad Cochran, George V. Voinovich, Robert F. Bennett, Tom Coburn, Norm Coleman, Conrad R. Burns, Jon Kyl, Pat Roberts, Mel Martinez, John Ensign, Lamar Alexander, Elizabeth Dole, Christopher Bond, John Cornyn.

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 Executive Calendar No. 907, the nomination of an Andrew von Eschenbach, of Texas, to be Commissioner of Food and Drugs, Department of Health and Human Services, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Utah (Mr. HATCH) and the Senator from Alabama (Mr. SHELBY).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Vermont (Mr. JEFFORDS), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote ''yea.''

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

The yeas and nays resulted—yeas 89, nays 6, as follows:

[Rollcall Vote No. 273 Ex.]

YEAS—89

Akaka	Dole	McCain
Alexander	Domenici	McConnell
Allard	Dorgan	Menendez
Allen	Durbin	Mikulski
Bayh	Ensign	Murkowski
Bennett	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Frist	Obama
Brownback	Graham	Pryor
Bunning	Gregg	Reed
Burns	Hagel	Reid
Burr	Harkin	Roberts
Byrd	Hutchison	Rockefeller
Cantwell	Inhofe	Salazar
Carper	Inouye	Sarbanes
Chafee	Isakson	Schumer
Chambliss	Johnson	Sessions
Clinton	Kerry	Smith
Coburn	Kohl	Snowe
Cochran	Kyl	Specter
Coleman	Landrieu	Stabenow
Collins	Lautenberg	Stevens
Conrad	Leahy	Sununu
Cornyn	Levin	Talent
Craig	Lieberman	Thomas
Crapo	Lincoln	Thune
Dayton	Lott	Warner
DeMint	Lugar	Wyden
Dodd	Martinez	

NAYS—6

Baucus	Grassley	Vitter
DeWine	Santorum	Voinovich

NOT VOTING—5

Biden	Jeffords	Shelby
Hatch	Kennedy	

The PRESIDING OFFICER. On this vote, the yeas are 89, the nays are 6. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. ENZI. Mr. President, I thank the Chamber for allowing us to do the cloture vote. With the strong support shown by the cloture vote, I would highly recommend that we get this man confirmed so he can actually have the opportunity to do the kinds of things that have been expected of him in the debate we have had. I also thank Senator KENNEDY for his tremendous help. We have had a number of meetings, a number of hearings. This is the second confirmation of an FDA Director we have worked on. It will be nice to have somebody actually in the position, but I do thank Senator KENNEDY and all of his staff.

I do want to mention the staff person who has directed my health issues. Stephen Northrup is on the floor, and I thank him particularly for all of the work on all of the health issues we have had. Anybody who has looked at the list of those we have done will find it has been a very productive session in the health area, and we are still working on another half dozen issues that could pass yet in this session before the week ends. So I thank Stephen for all of his tremendous help. I ask that people support the nomination of Dr. Von Eschenbach.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I spoke earlier this morning against cloture. Cloture passed, which for the public listening means there are 60 percent or more in support of stopping debate, and there is under the rules the possibility of 30 hours of debate. I don't intend to probably speak for more than a half hour, so if anybody is interested in how long postcloture debate might go on, it won't go on very long from my point of view. But I do want to take some time to tell people, even though it is quite obvious this nominee will be approved, why I think he should not be approved.

I placed a hold on this nominee for quite a few weeks. That hold obviously was ignored by the leader when he filed cloture, which is his right to do. I voted against cloture because I take my constitutional duty to conduct oversight of the executive branch of Government very seriously, and I think the nominee is standing in the way of Congress doing its oversight of the agency of which he is now Acting Director and will probably soon be the confirmed Director. That sort of lack of cooperation violates the separation of powers and the checks and balances within our constitutional system.

I hope my colleagues know that I take a great deal of time to make sure that we do both jobs we have the responsibility to do here in the Congress. One is to pass laws. But the one we are never taught much about in political science classes is the constitutional job of oversight, which is the responsibility to make sure the laws are faithfully executed and money is being spent according to congressional intent, and the overseeing of the administrative branch of Government. So I take a great deal of my time in the Senate trying to make Government work not just by passing laws but by making sure they are faithfully executed. I don't do that all by myself as a single Senator. I have good staff. I charge my staff to conduct oversight rigorously and to investigate any areas where the Federal Government is failing to be transparent, accountable, and effective. Transparency is so important, because the public's business, which is everything about the Federal Government, ought to be public. If the work of the executive branch fails the