

all-white club at that particular point. But we had a different standard imposed.

So I suggest we have to get away from this double standard that when those who raise questions about someone's nomination by virtue of their difference of philosophy, that we not charge it is based upon right-wing radicalism any more than it is based on left-wing radicalism. We have to put a stop to this situation. We have to remember that Bill Clinton won the election. He is the President of the United States. It is my own judgment he is entitled to the nominees of his choice.

We may disagree with those nominees, but every time we disagree with Bill Clinton's philosophy, President Clinton's philosophy, or that of the individuals he nominates, we should not then, by virtue of our disagreement with their ideology or practice, turn it into a character issue and then begin an all-out assault on character.

We obviously have a duty to challenge philosophy and policies when they are fundamentally in conflict with our own. But we also have to deal fairly with these individuals. We have to remember, also, the axiom that bad appointments make bad politics. The President of the United States, when he makes an appointment, is held accountable for that individual's record, that individual's character, that individual's performance. And, barring evidence of incompetence as far as technical qualifications are concerned, professional qualifications, barring clear and convincing evidence of moral deficiencies that would prevent that person from occupying that position, I think we have an obligation to confirm the President's nominees.

What we have to stop in this system is, really, shredding the character of the individuals who come before the body for confirmation. If we disagree philosophically, let us be very up front about it and base it on that. What I see taking place is something of a variation of what Senator MOYNIHAN of New York talked about in his brilliant piece a couple of years ago, called "Defining Deviancy Down." What he was talking about at that time was events that took place in the 1920's or 1930's, some decades ago, that we would look at and say, "What a horrible thing that was." The Saint Valentine's Day massacre was one he pointed to. There were, as I recall, seven people involved in that. Four were killed by three others, or vice versa. That incident made worldwide news. It has gone in the history books. Today, it is likely that might not appear in bold headlines in the Metro section of the New York Times or the Post or elsewhere.

We have seen so much violence spread in our society we have become inoculated against it, almost. We have been immunized against a sense of outrage about the level of deviancy because we defined it down.

It seems to me we have to also talk about defining civility down. We have,

I think, lost some of our moorings. We now resort not only to challenges of philosophy but to challenges of character. In doing so, I think we have lowered the standard for civil debate and discourse in this country.

The anger we see outside of these Chambers is being reflected inside the Chambers. We do not want to tolerate or promote barbarism outside the gates. We do not want to promote it inside the gates. I think what we have to do is lower the rhetoric and the charges and the countercharges about who is sacrificing whom on which altar and stop imposing double standards and situational ethics and come back to what I believe to be the correct standard. Either we find Dr. Foster to be medically, professionally unqualified to serve in this position, or we find him to be so morally bankrupt that it would be a discredit and an injustice to have him serve in that position.

Frankly, I do not find that we have measured up to that burden of proof. I believe Dr. Foster is a good and decent man. I believe President Clinton is entitled to have his nominee confirmed, even though we might disagree or I might disagree with his particular views or practice. Nonetheless, that is not the test that should be imposed. The test should be, Is he professionally qualified and does he have a moral character to serve in that position?

There are those on this side who believe fundamentally he has misrepresented the number of abortions that he performed during the course of a long practice. That is, perhaps, a legitimate issue to be raised. But I do not think we ought to be engaged in savaging each other, in attacking each others' motives. This is a serious issue and is one that ought to be debated in that fashion without resorting to a lot of hurdling of invective.

Mr. President, I hope my colleagues will in fact allow a consideration of Dr. Foster on the merits. That was in fact allowed for Judge Bork. He was defeated. It was allowed for Senator Tower, whose nomination was also defeated, and others whose names never really made it to the floor by virtue of their membership in what were described as racist clubs or organizations.

My hope is that we can return to a level of civil discourse in this society of ours, rather than the shouting and the anger that we see being displayed from day to day, and really try to deal with these issues on the merits.

I think Dr. Foster is entitled to have his name considered on the merits. We hope there will be enough Members who will vote to terminate any attempt to filibuster his nomination.

Seeing the hour of 11:30 is about to be reached, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

The Senate continued with the consideration of the bill.

Mr. WARNER. Mr. President, on behalf of the management, we continue to make good progress. It is obvious we will not have a vote before 12 o'clock, at which time under the previous order the Senate then goes forward to debate the Foster nomination.

Mr. BAUCUS. Mr. President, I thank the Senator. I do not know if the Senator knows this, but Senator EXON has withdrawn both his other amendments.

Mr. WARNER. Good.

Mr. BAUCUS. The only potential amendments remaining, in addition to the managers' amendment, are potential amendments by Senator LAUTENBERG, Senator NICKLES, Senator SARBANES, Senator SMITH, and Senators STEVENS and MURKOWSKI.

Mr. WARNER. Mr. President, I am pleased to say to my colleague—and to announce to the Senate—that Senator SMITH's amendment is now in a situation where it will be resolved. I am not sure of the final outcome. But we will be informed.

Mr. CHAFEE. There will be an amendment.

Mr. WARNER. There will be an amendment, which I have learned of from the distinguished chairman of the committee.

Mr. CHAFEE. Mr. President, the Smith amendment we are working out now, and the language. It is my understanding that will be an amendment that will be acceptable.

Mr. BAUCUS. It may be acceptable. We are still running the trap lines over on this side.

Mr. CHAFEE. Well, in other words, I would not envision a vote on it.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### EXECUTIVE SESSION

NOMINATION OF HENRY W. FOSTER, JR., TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE AND TO BE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon

having arrived, the Senate will now go into executive session to consider the nomination of Dr. Henry W. Foster, Jr., to be Surgeon General. The clerk will report the nomination.

The legislative clerk read as follows:

The nomination of Henry W. Foster, Jr., to become Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service.

The Senate resumed consideration of the nomination.

Mr. KENNEDY. Mr. President, as I understand, there is an agreement to vote at 2 o'clock. So there is a 2-hour time limitation, an hour to be controlled by the Senator from Kansas, Senator KASSEBAUM, and the other hour to be controlled by the Senator from Massachusetts.

The PRESIDING OFFICER. That is the order.

Mr. KENNEDY. I yield myself 8 minutes.

Mr. President, over the period of the last 24 hours, I have tried to look at this whole nomination, including the extensive hearings that we had as well as the debate on the floor, to try to determine what is really before the U.S. Senate.

What we have before the U.S. Senate is an extraordinary nominee—an extraordinary human being—who is eminently qualified to serve as the nation's Surgeon General. And I thought back to the beginning, and asked myself: "What shape did the process take?"

We know that Dr. Henry Foster's name was brought to the attention of President Clinton by a very distinguished former Republican Cabinet Member, Dr. Louis Sullivan, with whom many of us worked very closely during his leadership at the Department of HHS. We know that Dr. Foster's nomination was seconded, effectively, by the presence of Lamar Alexander, a Republican Governor, who recognized the work of Dr. Henry Foster and his leadership ability in confronting the problem of teenage pregnancy and asked him to develop a program to do so. Those are two Republicans that right from the start recommended Dr. Henry Foster for this important position.

And even on the Labor Committee, Senator FRIST—Dr. FRIST—the one Member of the U.S. Senate who is a doctor and who knows Dr. Foster and who has supported his nomination, coming forward and speaking on behalf of Dr. Foster's extraordinary record and qualifications as a physician, educator and community leader.

So, looking back from the very beginning, we see that this nomination was borne of the effort to put forth someone who has been recognized as having a distinguished record—and he has had a distinguished record, which I will speak to—but also someone who was not going to be necessarily identified with any one particular political

party, but rather with strong bipartisan support.

We have heard a great deal on the floor of the Senate and in the press, that Dr. Foster was selected for narrow partisan or political reasons. The fact of the matter is that he was nominated because of a very distinguished record.

And what a record it has been—what a record it has been. Dr. Foster possesses an extraordinary record of service. We have a nominee who has demonstrated his commitment to the neediest people in our country and our society. After he graduated from medical school, he could have practiced medicine in any of the cities of this country and in many rural areas and had a very comfortable life. But, no, he did not do that.

What did he do? He went to the poorest areas of America. Why? Because he wanted to serve his fellow human beings. He went to the rural South—and treated women and their children. Most of Dr. Foster's patients had never even seen a doctor before. He went into homes and houses down there that, in many instances, did not even have electricity or hot water. He went there to help and assist deliver babies. To provide pre-natal care to women who had never had access to pre-natal care before. He is a baby doctor. A baby doctor who is about service to his community. Service to people. He is a good and decent man who has committed his entire life—his entire life—to service. Not only did he engage in an program of service in rural Alabama, but his record shows that he was widely recognized for his dedication, ability, leadership and expertise.

He was recognized as a physician. He was recognized as an educator. He was recognized as a researcher in sickle cell anemia and infant mortality and the problems facing the youngest and most vulnerable in our society.

He was recognized by the Institute of Medicine, perhaps the most prestigious assemblage of the medical profession in our country, being elected to that prestigious body with a regular membership of only 500 members. In 1992, he was elected by the membership to serve as one of only 21 members of the Institute's governing council—one of only 21 members selected by the members of the Institute—his peers. What an extraordinary, extraordinary recognition of a man who was selfless, dedicated and passionate about serving those living in the poorest areas of this country.

During his career, after numerous accomplishments, he was selected to be Dean of the Meharry School of Medicine—a distinguished medical school. Did he stop with that? No. What did he want to do? He wanted to be a teacher in the classroom as well as dean of the medical school. Why? Because he wanted to work with young people. He wanted to help train them, and bring more qualified and compassionate doctors into the field of medicine.

Was he satisfied with that? No. He went to his community and developed a

program to deal with the problems of teenage pregnancy and the school dropout problem. He developed a program that has made such a difference in the lives of young people, that it has been recognized by a President, George Bush, a Republican President of the United States.

Now that is the record of Dr. Foster. That is the record that is before the U.S. Senate. That is the record of service before us. By voting for Dr. Foster, we are not doing Dr. Foster a favor, we are doing a favor to all Americans. We are doing a favor to those parents of those teenagers who are confronted with the sad prospects of teenage pregnancy, welfare dependency, and hopelessness. We are doing a favor to all those who struggle with the life-threatening illness of cancer. We are doing a favor to all those whose families or friends or neighbors are afflicted with AIDS. We are doing the United States of America a favor, which needs a highly principled and dedicated person to serve his country. That is what we have here: A good, outstanding, selfless individual.

Now, you would not understand that, necessarily, from those who have spoken in opposition to this nomination, because they have their own message, and their message is very clear. They want to send a very particular message. Sure, they have distorted his record, misrepresented his record, and in spite of the fact that Dr. Foster at the committee hearings, and the committee itself, thoroughly answered and refuted the shallow allegations against him, they are repeated again and again and again and again and again. And those that repeat them do a disservice to themselves, they do a disservice to themselves.

What their message is and why this is being done is very clear to me. They are doing this because they want to say to any and every doctor in America, "If you ever perform an abortion, if you ever do so, even to save the life of the mother, you'll never get a position of confidence or leadership in the U.S. Government, because you'll never make it through the confirmation process by the U.S. Senate."

That is the message. We understand that. They are not fooling anyone. When, on one hand you have Dr. Foster's extraordinary record of service and on the other, you have the repeated distortions, misrepresentations, and shallow allegations, the message is very clear and it is motivated by narrow political concerns and interests. That is the message that is being sent to doctors in this country. That is the message that is here.

Dr. Foster's opponents prefer to play a negative card. When all of America is struggling to look upward, higher—to reach out for a better future for themselves and their children—his opponents would have us languish in darkness. They do not want to recognize the

light, the hope, that Dr. Foster represents for the future of this country.

During the course of Dr. Foster's testimony at the hearings, Senator PELL asked him what has been one of the most inspiring moments of his life. And Dr. Foster answered, "Well, it was just after I and my classmates had graduated from seventh grade, and my father brought us out to the edge of town and treated all the children in our class and all the children in the front of the airplane ride." Two children in the front with the pilot, children in the back—Dr. Foster described the way he felt when that plane took off.

He said, "When we got up in that air, every child that was in that class looked out and they could see trees as far as the eye could see. They could see that there was a broader land, that there are lakes out there and there are hills."

Perhaps for the first time, they saw that there was a broader America than just the school house where they went to the school, and their own small home where they grew up, in a segregated society with little opportunity.

He said:

That plane ride was one of the most inspiring moments of my life, because it taught me that there is a future out there, and that I could be a part of it. My hope and dream of service is to provide that same "airplane ride" to the young people all across this country.

That is the soul of Dr. Foster. You would not know it listening to the distortions and misrepresentations of the opposing side; you would not know the true record of the nominee who is before us. You would not know it when they repeat and repeat and repeat these charges that any fair-minded person would understand have been responded to.

How many political primaries are we going to have on the floor of the U.S. Senate? The election is 18 months away. What was yesterday? Super Wednesday? What is today? Super Thursday? What are we going to say to every person that is nominated? Do we tell them that they are going to go through this pillory to serve the American people?

That is the issue. Are we going, in this institution and in this body, to appeal to the better instincts of its membership? Or are we going to be slaves to those kinds of interests that are holding hostage the nomination process here before the U.S. Senate? I hope, Mr. President, that the higher angels of our character will come out today when we vote at the hour of 2 o'clock.

I see my colleague on the floor, the Senator from Washington, who has been such a leader on this issue and who speaks with such eloquence and insight into the qualifications of this nomination.

I yield her 5 minutes.

Mrs. MURRAY. I thank my colleague from Massachusetts for his outstanding work on this nomination. I remind my colleagues that we should be here debating the nomination of Dr. Henry

Foster and what message and tone he can bring to this office. But we are not. We are here debating whether or not Dr. Foster will have the opportunity to have an up-or-down vote on the floor of the Senate.

I have been working with Dr. Foster for a number of months now. It is extremely disappointing to see this fine man, after all he has been through, being denied a vote on the floor of the Senate. I hope our colleagues across the aisle can step back today and think about the larger message. Think about what will happen if we block this vote today and do not allow this man with great dignity to have the vote that he deserves after the last 5 months.

Throughout this debate, I have been focusing on what Dr. Foster brings to this office. Certainly, he brings the issues of women's health care clearly to the forefront of this Nation for the first time in our history, and that is a good thing. Certainly, he brings the ability to send a message to our teenagers, a vision of hope, a vision that they can be somebody. That is something that is needed in this Nation.

But I fear, Mr. President, that many of our American viewers today do not realize that that is not what this vote is all about. This vote has become a vote about Presidential politics, and I find that very sad. As we have worked to get to the last three votes, it has been surprising and saddening to hear what some of my colleagues have expressed. They do not feel they can vote for this candidate—not because he is not qualified, not because they think the process should be fair. They tell me they do not want to be seen as giving one Presidential candidate a vote over another Presidential candidate. It has become an issue of winners and losers. Who are the winners? Who is going to win? I can tell you who the losers are. The losers are the American people. The American people will be the losers because not only will they lose a fine candidate for Surgeon General, they will lose because the process has been sullied, and I think that is a sad statement for this Nation.

I think the winner—no matter what the outcome of this vote—is Dr. Foster. He is a man of dignity, a man of courage, and he is a man of honor. Every one of us—every one in this Nation—should stand up and give this man a loud round of applause. He deserves it. He has lived through torture—name calling, watching his whole, entire life be put in print—and he has shown all of us, as he sat before the committee, that he is a man of dignity. Dr. Foster certainly is the kind of person that deserves to be in the Surgeon General position, and he is also a man we all want to be like. He is a man of honor, and he should be very proud today that he has shown this Nation how to be a leader and what we should expect of leaders and what we want our Nation's leaders to look like.

I hope that all of our colleagues will step back and think about the larger

message as they vote today. This man deserves a vote on the floor of the Senate. But above all, he deserves our applause for going through this process and showing us what a leader really looks like.

I thank my colleagues and I yield the floor.

Mr. KENNEDY. I yield 5 minutes to the Senator from California, Senator BOXER.

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] is recognized.

Mrs. BOXER. Mr. President, I thank my friend from Massachusetts and my friend from Washington for their extraordinary leadership in trying to get a very simple premise fulfilled, and that premise is that Dr. Foster deserves an up-or-down vote. It is wrong to deny this man a vote. Let him stand or fall on his merits or demerits.

I saw him standing next to the President yesterday at the White House, saying, "All I ask for is fairness." He wants a vote, and 57 Members of the Senate—Democrats and Republicans—said, "That is right, Dr. Foster; you deserve a vote." But a minority said no. If I were one of them, I would not have slept very well last night because it is a mean-spirited thing to do to a decent American. It is not fair. If Americans are anything, they are fair.

Dr. Foster is a pawn in a political game—a pawn in a political game—a physician who went to work in rural America when he could have had a cushy job. He is a physician who went into the toughest, most difficult parts of our Nation to help lower the infant mortality rate, and he did. He is one who took on the problem of teenage pregnancy. It is incredible that my colleagues on the other side of the aisle who are trying to block this vote criticize his program. What did they ever do in their lives to help stop teenage pregnancy? Let us hear what they have done. Oh, they throw the stones. What have they done? Have they walked into the toughest parts of America and taken a problem on that nobody else wants to take on? I do not think so.

They have a pretty cushy job right here. But they throw stones at a man who should be honored—and, by the way, he has been honored by President Bush, a Republican, I might say, who gave him a Thousand Points of Light Award. He was honored by Dr. Louis Sullivan, a former Republican Secretary of HHS, who recommended him for this job. People say President Clinton was playing politics. I have to tell you, this was the most bipartisan appointment I have seen. Senator KENNEDY made that point at a press conference yesterday. It is a truly bipartisan appointment.

Dr. Foster is being denied a vote because two Republican candidates for President want to block a vote on him. The Republicans are being told, "You have to be loyal. Do not allow a vote on this man. It will hurt our chances."

Playing politics is not what a U.S. Senator is supposed to do. They are

supposed to be fair. They are supposed to be just. They are supposed to step up to the plate and put political considerations behind them and give a man a chance.

I have to tell you, maybe these two political candidates for President will do well in the short run. But do you know what I think? In the long run, I do not think they will do very well because they are out of step with mainstream America. If you ask the American people what are the two important things they want to see in a President, it is fairness and courage. And it is not fair to deny this man his day. It is not courageous to cower to the right wing of one political party. So, in the long run, mainstream America is not going to look kindly at these two candidates—mark my words.

I think this debate has been somewhat disturbing. Last night I was on a TV show with one of the leading opponents of Dr. Foster, and that Senator called Dr. Foster an abortionist. I think it is an outrage. He owes Dr. Foster an apology. Dr. Foster brought thousands of babies into this world and he is called an abortionist? Thirty-nine abortions over 38 years, a legal medical procedure, and he calls him an abortionist on national TV. He is lucky he cannot be sued for defamation of character.

Dr. Foster is an ob-gyn, an obstetrician/gynecologist, a decent man, and he deserves a vote. I stand very proudly with the Senator from Massachusetts, with the Democratic women Senators, with the 11 Republicans who had the guts to stand up and say fair is fair, and I hope and pray that we have a different result today. If we do not, I think the fallout will be much greater than anyone now anticipates.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 40 minutes remaining.

Mr. KENNEDY. I just yield myself 15 seconds, and then I will yield 5 minutes to the Senator from California.

In one of the most important considerations in debate, the silence on the other side is deafening—their willingness to engage in this debate and discussion, and we have nothing to speak about on the other side.

I yield 5 minutes to the Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Massachusetts. I thank the Senator from Washington for all the work she has done on this matter.

I really address my remarks, Mr. President, to 43 Members of this body, and I want to share with them some of my thoughts and see where they register with them.

Let me start by saying that my basic belief regarding this nominee is that—in the absence of any compelling evi-

dence of misconduct, insufficiency of professional qualifications, or flaws in character—the Senate owes it to the President and the nominee to conclude its advise-and-consent role and grant its approval. I say that particularly in view of what has happened to his predecessor.

In my belief, it is not appropriate for a minority of the Senate to prevent a vote on a Presidential selection based on unsubstantiated arguments about what Dr. Foster might have known or should have said. That is not the Senate's role.

In addition, it is unprecedented to deny the President even an up or down vote on a well-qualified nominee for a public health position such as Surgeon General.

Therefore, I believe that Dr. Foster is entitled to an up or down vote by the Senate. Not a procedural vote, but a real majority vote that will show the Nation that a majority of Senators favor Dr. Foster.

Let me also say that I believe that many of the concerns raised by Dr. Foster's opponents over the last 5 months have been a smokescreen of false issues, innuendo, and other distractions designed to obscure the central issue here, which is a woman's right to choose an abortion.

However, I am grateful that Dr. Foster's nomination has been investigated approved by the Labor Committee by a 9-7 vote and finally been brought to the Senate floor. It is my hope that in the remaining time for debate, Dr. Foster's real qualifications can be made clear and any remaining issues can be raised and answered, once and for all, and that a few more Senators can be persuaded.

The concerns of Dr. Foster's critics boil down to a few basic elements, which we have continued to hear over and over. These arguments are:

Dr. Foster has insufficient professional qualifications and credentials to serve as Surgeon General;

Dr. Foster provided contradictory information on the number of abortions he has performed;

Dr. Foster knew about the Tuskegee experiment, in which 400 black men with syphilis were left untreated, before it was revealed in 1972;

Dr. Foster performed sterilizations of mentally retarded women during the 1970's; and

Dr. Foster's I Have a Future teenage pregnancy prevention program focuses on contraception rather than abstinence.

While most of these issues have already been thoroughly addressed and dismissed, I would like to briefly summarize the factual responses to each of them, based on what I have learned:

On the issue of Dr. Foster's qualifications and credentials, I believe that they are impressive. Dr. Foster, in rough chronological order:

A graduate of Morehouse College and the University of Arkansas medical school;

A former U.S. Air Force captain;

An examiner for the American College of Obstetricians and Gynecologists;

An advisor to the National Institutes on Health and the FDA on maternal and child health;

A member of the National Board of Medical Examiners, the accreditation council for graduate medical education, and the board of the March of Dimes;

A Distinguished Practitioner recognized in 1987 by the National Academies of Practice;

Acting president of Meharry Medical College, where he has served for the last 21 years as dean of Medicine and Chairman of Obstetrics.

On the issue of the contradictory estimates of abortions Dr. Foster performed and his overall credibility:

A review of 38 years of medical records determined that the actual number of abortions Dr. Foster has performed or been the doctor of record are small in number [39]—particularly in view of his estimated delivery of 10,000 live babies.

The initial confusion surrounding this number resulted from Dr. Foster having been listed as the attending physician for additional procedures that he himself did not perform, as well as disputes over whether hysterectomies Dr. Foster performed to protect the health of women should be counted as abortions if pregnancies were discovered during the procedure.

During his hearing, Dr. Foster provided the following explanation of the early contradictions: "In my desire to provide instant answers to the barrage of questions coming at me, I spoke without having all the facts at my disposal." The majority of the committee found this explanation reasonable enough to approve the nominee.

On the claim that Dr. Foster consented to the infamous experiments at the Tuskegee Institute:

While Dr. Foster was at Tuskegee during the time of the study, his expertise was maternal and child health rather than sexually transmitted diseases;

A full committee investigation showed that the possibility Dr. Foster knew about the study is tenuous at best, resting on assumptions about what he should have known or might have been told, rather than direct evidence; the doctor whose statements have been used to suggest Dr. Foster failed to act promptly has stated repeatedly that Dr. Foster did not know of the study before it was revealed in 1972.

Without any direct or concrete evidence that Dr. Foster actually knew about the experiments and failed to take action, it is not reasonable to judge him a participant or to burden him with the responsibility of having to shut down an experiment he did not control nor was he a party of this ill-conceived study.

On the assertion that Dr. Foster performed sterilizations of mentally retarded women:

Dr. Foster sterilized retarded girls at the request of their parents under the established practice guidelines and ethics of the times, and wrote sensitively about these cases and the danger and tragedy of forced sterilization in 1974;

If there were any real questions about Dr. Foster's ethics, he would not have been endorsed by every major medical association in the United States.

On the claim that I Have a Future Program does not promote abstinence:

This after-school program focuses on delaying teenage pregnancy, including providing education about abstinence and increasing self-esteem as a way of preventing early sexual activity. Only if necessary are participants referred to medical personnel for information about contraception;

Every press article and description I have seen talks about how the program emphasizes abstinence and does not just throw condoms at the kids. Whether or not all program brochures include the word "abstinence" or not is not the central issue.

In fact, the central motivation for the I Have a Future Program was Dr. Foster's observation that simply providing contraceptives to at-risk teens was not an effective form of pregnancy prevention for at-risk teens, and self-esteem and personal goal-setting must be included.

Should he be denied because abstinence was not on a piece of paper?

In all, here is a man who has impressive qualifications, an upstanding character, and reputation for integrity in his home community and among his professional peers. He has no glaring flaw that justifies denying him confirmation.

Instead—and this is increasingly clear—there is just one real reason that he is being opposed: he performed 39—the number is disputed—medically necessary legal abortions as part of a career that includes 10,000 deliveries of live babies.

What I would like to point out is that 39 is an amazingly small number, considering the human situations that Dr. Foster has encountered—women who have been raped; women whose mental or physical condition is such that they could not give birth; questions of major fetal deficiencies.

The fact is that out of 10,000 live babies delivered, there were few cases where Dr. Foster performed a medically necessary and appropriate abortion. To me, this is a very small number.

Were the procedures legal? Were they in accord with medical standards and performed as part of his established responsibilities? The answer to these questions, of course, is yes. Nothing has been raised to contradict this statement.

What is clear to me from the last 5 months of debate over Dr. Foster's

nomination is that there is now a question whether any obstetrician could ever hold the office of Surgeon General if they have performed even one legal, medically appropriate abortion.

That clearly is the question in my mind. I really believe the issue is that simple. And I strongly believe that the answer to that question should be yes.

I believe this body has but one choice and I am hopeful that, of the 43 there are 3 who will come forward and simply say, in fairness, Dr. Henry Foster deserves a vote in this body.

I yield the floor.

Mr. COATS. Mr. President, I doubt that anything I say will shatter the deafening silence the Senator from Massachusetts alluded to. But it will at least interrupt. We have a number of speakers. Mrs. KASSEBAUM, who normally would be managing this, is chairing a hearing of the Labor Committee. I know the Senator from Massachusetts, who was a former chairman of that committee, understands that sometimes they do not end as quickly as you would hope. She will be here as soon as she can. A number of other Members plan to speak on our side. Several of them are tied up in that same hearing but will be here shortly.

Mr. President, if yesterday's vote is any indication, Dr. Foster will not be confirmed as the next Surgeon General of the United States when we take this vote at 2 o'clock. I believe that conclusion is justified by the record. The Labor and Human Resources Committee held what everyone has described as thorough and fair hearings. Dr. Foster was given every opportunity to present, at whatever length of time he required and in whatever detail or depth he required, his qualifications, his experience, and to present his answers to the questions that were raised.

Many have concluded, on the basis of that hearing, those who sat through the hearing and those who have examined the record, that Dr. Foster did not satisfactorily answer the many disturbing questions that were raised, that a disturbing pattern of behavior and of responses—whether directed by the White House or not I do not know for sure—emanated from those hearings and left many with serious questions. I detailed many of those in a letter to my colleagues, a very lengthy letter comparing the public documents, matters of public record, which in many numerous instances was in direct contradiction to Dr. Foster's version of the various incidents; issues in this debate that arose. Some of those will be addressed here today. That, however, has been a matter of examination for all Senators. They have all had the opportunity to do that, and in a sufficient length of time to do that.

I believe that the conclusion that Dr. Foster is not the right man for this job is justified by the record. Questions of medical ethics that were raised are not just disturbing, in my opinion they are disqualifying. Questions of credibility in this Senator's opinion have never

been adequately answered leaving us with a candidate that the New York Times says "fails the candor test."

These problems, problems that the administration and problems that the nominee himself were largely responsible for, I believe have decided the outcome of this procedure. But I would like to spend a moment this afternoon on the broader lessons that should be taken from the tenure of the former Surgeon General, Dr. Elders, and the apparent failure of this nominee to receive the necessary support for this position, lessons that hopefully will inform the selection of the next nominee for this office.

The President of the United States needs to understand that there are millions of Americans committed to the protection of innocent life and the protection of the innocence of childhood. They are not fanatics to be demonized. They are part of the responsible mainstream of American life.

They understand that this administration disagrees with them. But what they do not understand is why this administration has chosen to actively assault their deepest beliefs, to disdainfully dismiss their highest ideals, to treat them as if they were beneath civility.

This bias has been particularly obvious in the Office of Surgeon General. The former occupant of the Surgeon General's Office, Dr. Joycelyn Elders, abdicated her role as spokesman for public health entirely, and became what appeared to be a full-time spokeswoman for radical causes. And this nominee has shown, as I believe the record indicates, little sensitivity for the moral concerns of countless Americans whom he himself called "right-wing extremists."

There is almost a mantra coming out of the White House, a mantra coming out of the Democrat Campaign Committee, a mantra being heard on this floor that any opposition to the President, almost on any subject, is the work of right-wing extremists. Boy, what a powerful group they are. I am not sure even if we can identify who they are. But any opposition raised to what the President deems his priority, his agenda for America, is dismissed either by the President or by his spokespeople as just the work of the right-wing extremists and, therefore, to be dismissed.

I would suggest it goes to something far deeper than that. It goes to an undercurrent that threads its way throughout American life, American culture. It goes to the values that many Americans hold dear, people who do not even belong to any particular political party, people who would not begin to identify themselves as right wing or extremist or anything else—just concerns that affect everyday Americans, American families, American parents, those of us that are concerned with some of the breakdown in our culture and some of the undermining of our values.

So we raise questions about the bully pulpit that is being used by the administration, by the President and by the Office of Surgeon General to advocate an agenda that many of us feel is out of the mainstream of what the Democrats describe as the mainstream, but very much in the mainstream of what America has tried as America's agenda. We can debate this. We can debate what is the best course of action to take, and what direction we ought to go and what our values ought to be. We are not very successful at legislating those values. And I do not think it is possible to legislate those values. These problems are not going to be solved in this Chamber. They are going to be decided and solved around the kitchen table, in the family rooms, and where Americans live and work, and where the most discourse takes place among our citizens.

But there are many who are concerned that the Office of Surgeon General has been used as an advocacy post for a certain agenda, an agenda that many of us feel is out of step with America's agenda, and the agenda of at least a very substantial majority of our people.

This use of this position for this purpose makes the work of the Surgeon General literally impossible because the role of that office traditionally has been—and I think in most of our definitions should be—the role of building consensus around important public health issues. Instead, it is hard to argue any other way but that the administration has turned public health into an ethical battleground by emphasizing not issues that unite us but issues that divide us. And more than that, they have ridiculed anyone who dares to disagree, including the Catholic Church, the pro-life movement, and millions of parents who do not believe that condoms are a universal substitute for moral conviction.

This administration by this attitude has undermined the public health discussion in America, and it has squandered the potential that exists for the Surgeon General and the Office of Surgeon General.

Now the President, it appears, will have again a choice to make with another nominee—whether that nominee will bind our Nation or rend it, whether it will unite the Senate or divide us. I have some questions for the administration, questions that I think deserve serious consideration and deserve an answer. Mr. President, when will you finally nominate someone who can unite us as Americans around important issues of public health instead of polarizing us? When, Mr. President, will you choose a candidate for this office who is not an advocate of the most divisive issues of our times but is an advocate for those issues that can bring us together as a people? When, Mr. President, will you allow us to return our focus from moral controversies to issues of public health? We are not asking you to send us someone that

we always agree with. But we are asking you to send us someone who does not bitterly divide us as a people. If your administration fails to do this, the consequences will be immediate, and I am afraid unfortunate. Because if the President insists that the Office of Surgeon General is a bully pulpit for radicalism, for advocacy, we will be forced to ask if the office should exist at all. I hope this is a decision we do not have to make. And I hope that the President will make his next choice with a lot more care than he exercised on his last two choices.

Mr. President, I yield the floor.

Mr. KENNEDY. Mr. President, I yield 5 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. I thank the Chair.

Mr. President, this is decision day on Henry Foster. This is not decision day on Joycelyn Elders. This is not decision day on Bill Clinton. We get to do that in November 1996.

This is decision day on Henry Foster. We should be talking about Henry Foster and is he or is he not qualified to be the Surgeon General of the United States of America. I believe he is.

Now, when one wants to ask: Where are those people who will unite us on broad issues of public health? Bill Clinton has done it. He gave us Dr. Phil Lee, a distinguished physician, who is our Assistant Secretary of Health, who is coordinating health policy in a time during shrinking budgets and higher need. He has given us Dr. Varmus to head the National Institutes of Health when George Bush delayed the appointment of the head of NIH because of a litmus test on fetal tissue. But Dr. Varmus is attracting the kind of young talent and retaining the seasoned talent for NIH to continue to be the flagship of research of the life science issues in America.

Bill Clinton is meeting his responsibility. Today, it is our responsibility to pick a Surgeon General. And we are not voting on Dr. Elders. We did that. We are voting on Henry Foster.

Henry Foster is a man unique unto himself, bringing his own credentials and expertise. He is not Joycelyn Elders in wingtips.

Now, let us get it straight. I regret that abortion has become the focal point of this debate rather than the broad policy issues of public health. We should be focusing on who can focus on prevention, primary care, and personal responsibility in a public health agenda. That is what it is all about, and Dr. Foster has done that.

We knew that, yes, there would be those who would focus on the big A word, abortion, so in a public hearing at the Labor Committee, chaired in a very outstanding way by Senator KASSEBAUM, I asked Henry Foster tough questions because I felt the public had a right to know. I said to Dr. Foster, "Did you ever perform an illegal abortion?" He said, "Absolutely

not. I have only done those things that were legal and medically necessary." I said, "Did you ever do a trimester abortion?" He said, "Absolutely not." I said, "Did you ever do an abortion for sex selection?" He said, "Absolutely not." I said, "Did you ever sterilize mentally retarded girls without parental involvement?" And he said, "Absolutely not."

So that is the record, and it is on the record. "Absolutely not." And on this sterilization study that has been discussed, the record is clear. Dr. Foster's name is on a study of a variety of people who conducted hysterectomies on retarded women, and on those three in which he was involved—and he was involved in only three—there was parental involvement and parental consent. They were acting in loco parentis, in the guardianship role of parents. Now, we believe parents should be involved. I support parental consent for abortion. There was parental consent in this area. Henry Foster did the right thing as a clinician, and he did the right thing in involving parents.

So that is where we are on these issues. Now, the question becomes with Henry Foster, when is good good enough? This man has devoted his life to public service and the practice of medicine. To be Surgeon General of the United States, to serve your country, when is good good enough? Thirty-eight years in the practice of medicine. When is good good enough to be Surgeon General? When you serve in the U.S. military as a captain, as a physician, when you have done that job for your country, when is good good enough to be Surgeon General? When you practice medicine in a town like Nashville, and you are chosen to be head of your own bioethics committee, you are asked to be the dean of a medical school, is that not good enough credentials? What more do we want? Competency, well respected by your peers, 38 years of devotion, volunteer work in the community, starting a program called "I Have a Future," going into the public housing projects to say to kids that you just say no.

Schoolmarmist admonitions with these Victorian values only get good headlines. They do not get good results. You have to go to those kids and reach out to them. And the way you get them to say no is when they say yes to the possibilities of a life where they can define themselves as full men and women, not only in terms of their sexual prowess.

That is what he did. And that is why George Bush wanted him to be a point of light, because these kinds of programs are a point of light.

The PRESIDING OFFICER. The Senator's time has expired.

Ms. MIKULSKI. Could I have 1 additional moment?

Let me just conclude by saying this. In a room in a meeting with Dr. Foster, I said to him, "What do you want to do as Surgeon General?" He said, "I want to help all Americans live better and I

want to help poor kids do better and make sure they have a future."

Dr. Foster has devoted his life to giving other people a chance. Let us give him a chance and not hide behind parliamentary procedure. Let us make this decision day for Henry Foster.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. I believe the Senator from New Hampshire has been waiting. Am I correct on that?

Mr. SMITH. I have been here. Yes.

Mrs. KASSEBAUM. I would like to yield to the Senator from New Hampshire 15 minutes.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. The Senator from Pennsylvania has said he is only asking for 3 minutes. I will be happy to yield and then take my time after the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Senator from New Hampshire.

The PRESIDING OFFICER. Is the Senator from Kansas or the Senator from Massachusetts yielding time to the Senator from Pennsylvania?

Mr. SPECTER. I ask the Senator from Massachusetts to yield 3 minutes.

Mr. KENNEDY. Three minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, it is my hope that at least three additional Senators will vote in favor of closing debate so that Dr. Foster can receive a vote on the merits.

I believe Dr. Foster is entitled to his day in court. He is entitled to his vote in the Senate. The sole issue which is holding up this confirmation is the issue of abortion. Cutting to the bone, that is it, pure and simple. And I think it is simply wrong to deny Dr. Foster confirmation because he has performed an operation which is lawful under the Constitution of the United States. And you see the pattern emerging. In yesterday's Washington Times, it is Ralph Reed, Jr., who is calling the tune for those who are opposing Dr. Foster, and in today's Washington Post it is Gary Bauer who is handing out plaudits to those in the Senate who are opposing Dr. Foster. I believe it is inappropriate for this body to deny this man a vote on the merits and to deny confirmation for performing a medical procedure, abortions, lawful under the U.S. Constitution.

I would remind my colleagues, Mr. President, that there is nothing in the Contract With America, which was the basis of our Republican victory last November, nothing in the Contract With America, on abortion. And that is not a mandate from the American people defining the Republican stand. I

would also remind my colleagues that if this body is going to become embroiled in this kind of an ideological battle, we are not going to be able to take up the issues which the American people elected us for. They did not elect us in 1994 on the abortion issue. They elected us to have smaller Government, less spending, reduced taxes, and strong national defense. Those are our core values and, if I may say, our core Republican values. And it is a very dangerous precedent for this body to have an ideological debate.

If we are going to subject people who want to be public servants to 60 votes, not the democratic majority, we are going to discourage people like Henry Foster and other qualified individuals from coming to this town, this Government, to serve. If there had been a demand for 60 votes for Justice Clarence Thomas, he would not be sitting on the Supreme Court of the United States today. And I know there have been nominees who have had a past filibuster test. But the appropriate standard, the nonideological standard is to say, "Is he qualified when he performs a medical procedure which is constitutional?" I yield the floor.

Mr. KENNEDY. We reserve whatever time we have. I believe the Senator from New Hampshire has been typically courteous to permit the Senator from Iowa to proceed for 3½ minutes.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 3½ minutes.

Mr. HARKIN. Thank you, Mr. President.

Mr. President, I want to focus my comments a little on the comments made yesterday by the majority leader, Senator DOLE. I have been for some time involved in the whole issue of filibusters. Senators may remember I tried earlier this year to do something about filibusters. The filibuster is being used here today. So, I looked it up in the RECORD, and here is what Senator DOLE said yesterday. He said, "Yes, supporters must obtain 60 votes." That is the way it works. I had the Congressional Research Service do a little work in that area. I have heard people say, "Oh, this never happened before." It has happened a lot." He goes on to say, "Since 1968 24 nominations have been subjected to cloture votes." As Paul Harvey might say, "Now for the rest of the story," because that is not quite correct. The fact is, Mr. President, that nominations have been defeated by filibuster after failure to invoke cloture in only two cases: the first was Abe Fortas to be the Chief Justice of the Supreme Court in 1968; the other was Sam Brown to be an Ambassador in 1994. Both nominations were made by Democratic Presidents and defeated by Republican filibusters.

Senator DOLE was half right. He said that there had been 24 filibusters. What he did not say was that 22 of them went through, and they got their nomina-

tions. Only two did not make it—Abe Fortas and Sam Brown.

I might also point out, Mr. President, that Democrats have never blocked a nomination of a Republican President by filibuster and defeat of a cloture motion. Never. Not once. Now, until recently we never had cloture votes on nominations. Up until 1949 you could not filibuster a nomination. Then the rules were changed and you could. And even then comity prevailed on both sides of the aisle. During the Eisenhower administration we let Ike have whatever nominees he wanted. It was not until 1968 that the first filibuster was held. That was on Abe Fortas. And cloture was not invoked.

The second, I said, was in 1994 on Sam Brown. But during all those years when there were Republican Presidents, a Democratic Senate never defeated, not once, by a filibuster a nomination of a Republican President. Those are the facts. And they cannot be disputed, Mr. President. Those are the facts.

So I would say to my friends on the other side of the aisle, do not hide. Do not hide behind this procedure. Have the guts to come out and vote up or down on whether Dr. Foster ought to be the Surgeon General of the United States. And for once and for all, put behind us this filibuster procedure on nominations. I believe, Mr. President, we are going down a very bad road, a very bad road, because if we continue this, the worm will turn. There will be a Republican President and there will be a Democratic Senate. And then the shoe will be on the other foot. And I say that is the wrong road for us to go down. Let us invoke cloture and have an up or down vote. Let us not hide behind procedure.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I yield 15 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. I thank the Senator from Kansas for yielding me this time. Mr. President, I rise in very strong opposition to Dr. Foster being confirmed as President Clinton's nomination to be Surgeon General of the United States. I also at this point would like to thank Senator KASSEBAUM for the fine job that she did with the hearings that were conducted very fairly, and I thank Senator COATS for his leadership in bringing information to the forefront regarding this nomination.

As Senator COATS has ably pointed out during this debate, there are many troubling issues surrounding the confirmation of Dr. Foster. And I always feel somewhat sad to have to be involved in these debates when individuals like Dr. Foster are brought into the arena, so to speak, because appropriate research was not done on the

nomination prior to placing that person in the arena, which has happened in this case, I believe.

The issues that I am concerned about include the credibility of Dr. Foster's responses to questions about his knowledge of the Tuskegee syphilis study, the infamous experiment with hundreds of black men with syphilis where they were deliberately left untreated in the name of medical research.

In addition, several members of the Labor Committee have indicated they remain unconvinced that Dr. Foster was, as he claimed, "in the mainstream" of medical practice when he performed hysterectomies on mentally retarded women without securing independent-party written consent and even years after the State and Federal courts, as well as the U.S. Department of Health, Education and Welfare had proscribed those and similar practices.

One of the principal issues surrounding this nomination is the credibility of Dr. Foster with respect to the number of abortions that he has performed. Various times since he was chosen by the President to be Surgeon General, Dr. Foster has claimed 1, 12, 39, and 55 abortions. And there is even a transcript of a public proceeding in which he appears to have claimed that he performed 700. The interesting thing about this, whether it is 1 or whether it is 700, one of those individuals, you never know, could very well, had they had the opportunity to live a full life, been the nominee for Surgeon General of the United States of America at some point in the future.

All of these doubts about Dr. Foster were summed up just right I thought by the New York Times editorial entitled "Ending the Foster Nomination," calling Dr. Foster a flawed nominee whose nomination involved sacrificing the principle that candidates for high office must fully disclose relevant facts and attitudes. The Times concluded that Dr. Foster's nomination deserves to be rejected.

Mr. President, even though there are many reasons to oppose the nomination other than his performance of and advocacy of abortions, let me focus my remarks this afternoon on just how extreme—I emphasize the word "extreme"—Dr. Foster's abortion policy views are. Polls by Gallup and others have consistently found that over three-fourths of the American people believe that abortion should be prohibited except to save the life of the mother after the first 12 weeks of pregnancy. Yet in the 1984 speech to Planned Parenthood of Eastern Tennessee, Dr. Foster expressed his strong opposition to restrictions on abortion after 12 weeks, about 150,000 of which are performed annually. Dr. Foster said—and I quote—"We in the movement must work to prevent the erection of such barriers to late abortion access." That is after 12 weeks. In other words, Mr. President, Dr. Foster's view is that abortion should be legal, on demand,

throughout pregnancy at any time. Let us explore for just a couple of moments what that means.

Last Friday Senator GRAMM and I introduced S. 939, the partial-birth abortion ban of 1995. Our bill is companion legislation to a bill called H.R. 1833 reported favorably by the House Judiciary Subcommittee yesterday.

Mr. President, partial-birth abortions are first performed at 19 to 20 weeks of gestation, very often much later.

To give my colleagues a clear understanding of how well developed an unborn child is that late in pregnancy, I have with me an anatomically correct model of a child—not a fetus, it is a child. It is a little child. Its face is formed; its arms, toes, fingers, eyes—this is a child.

Dr. Foster said he never performed a late-term abortion, and I have no reason to doubt that. I do not know. That is the statement that he made, and I am not accusing him of performing late-term abortions, but he is not blocking them either. So if you are not a murderer but you do not stop a murder, I think you can draw the conclusion.

I brought some photographs to show that premature babies of this very age are the victims of these partial-birth abortions. In this photograph, this is Faith Materowski. She was born at 23 weeks of gestation, just 3 weeks older than this little model would be, weighing 1 pound and 3 ounces, Mr. President. This photograph was taken about a month after she was born, and I am happy to report that Faith survived. She survived because her mother wanted her to live not die.

Let me explain, with the aid of a series of illustrations, exactly what is done to children about the same age in a partial-birth abortion. As I do, keep in mind that Dr. Martin Haskell, who by his own admission has performed 700 of these partial-birth abortions as of 1993—Lord knows how many after that—has told the American Medical News, the official newspaper of the AMA, that the illustrations and descriptions that I am about to present are accurate, technically accurate. In the first illustration, the abortionist—

Mrs. MURRAY. Will the Senator yield?

Mr. SMITH. I will not yield. I will be happy to yield when I finish and engage in questions and answers on your time.

In the first illustration, the abortionist, guided by ultrasound, grabs the baby's leg with forceps.

As you see in illustration 2, the baby's leg is then pulled from the birth canal. So you see the forceps now have grabbed the legs, pulling the baby from the birth canal.

In the third picture, in this so-called partial-birth abortion process, the abortionist delivers the entire baby, with the exception of the head—the entire baby. So I ask my colleagues to think about this, as to whether or not this is some impersonal thing or

whether this is a child now in the hands of the abortionist. It could be a doctor, Mr. President. If it were a doctor who wanted to save that life, the life would be saved; the baby would be born and the life would be saved. The only difference is it is an abortionist.

In illustration No. 4, the abortionist takes a pair of scissors and inserts the scissors into the back of the skull and then opens the scissors up to make a gap in the back of the skull in order to insert a catheter to literally suck the brains from the back of that child's head.

That is what happens in the so-called partial-birth abortion. Anywhere from the 19th or 20th week up, this can happen. It is unspeakably brutal, and yet some say the child does not feel this. Take a pair of scissors and slowly insert them into the skin in the back of your neck a little way and see how that feels to you.

According to neurologist Paul Renalli, premature babies born at this stage may be more sensitive to painful stimulation than others. I would think my colleagues would be repulsed by this and most Americans would be appalled, sickened, and angered that such a brutal act could be carried out against a defenseless child. This is a child, I say to my colleagues. This is a child; a defenseless child.

I ask you, would you put your dog to sleep by inserting scissors in the back of the neck and using a catheter to suck out its brains? Yet, under the Supreme Court Roe versus Wade decision, the brutal partial-birth abortion procedure that I just described is legal in all 50 States—all 50 States. And, in fact, the National Abortion Federation has written:

Don't apologize, this is a legal abortion procedure.

Exactly my point and exactly the connection with Dr. Foster. And before my colleagues stand up and accuse me of saying it, I am not accusing Dr. Foster of doing this. What I am accusing Dr. Foster of is ignoring the fact that it is taking place and accepting the fact that by any means, any means legal—and this is legal—by any means legal, a life can be taken. So lest my views get misrepresented on the floor of this Senate, I am making it very clear.

So when Dr. Foster says he wants to prevent the erection of barriers to late-abortion access, he is tolerating and condoning this. That is a late abortion, and he is tolerating it and allowing it to happen. Based on Dr. Foster's own statement, one can only conclude that he would oppose, and oppose strongly, the very bill that I have introduced. I have not heard otherwise.

The grotesque and brutal partial-birth abortion procedure that I just described and illustrated on the floor of the Senate today can and should be outlawed. And if the Surgeon General of the United States, whoever he or she may be, spoke out against it, it would



be outlawed, and that is the kind of Surgeon General that I want.

The bill that Senator GRAMM and I have introduced would outlaw it, and our bill amends title 18 of the United States Code so that:

Whoever, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus should be fined . . .

Not the woman, the doctor—called a doctor—the abortionist.

So, Mr. President, when Dr. Foster speaks of these barriers, he is talking, in effect, about bills like mine, like the bill that would ban partial-birth abortions. He is providing, when he says a woman's right to choose, a woman's right to choose partial-birth abortions. This is what it means. Let us put some meaning to the words, because that is what it means.

Out of all of the controversy surrounding Joycelyn Elders, all of the unbelievable statements and the controversy that we endured during her all-too-long and lengthy tenure, I cannot understand why the President would choose as his successor someone whose past record and policy views on the pressing social questions of our time are so out of tune, so far out of sync, with the rest of the American people.

The Surgeon General should be someone that the American people have confidence in, someone who would put the intense controversy of the Elders years behind us. Yet, President Clinton apparently, without even reviewing carefully Dr. Foster's record, which places him, unfortunately, in this debate, did not do a good job of investigating his past and even recklessly went ahead and made this nomination.

Mr. President, there are over 650,000 physicians in the United States of America—black, white, male, female, Asian, Hispanic, Indian. Surely, surely there is one out of 650,000 that could be brought to the floor of the U.S. Senate that would not have this kind of controversy and this kind of debate following the Elders reign.

My friend and colleague, Senator MIKULSKI, a few moments ago said on the floor that she could not understand why this whole thing was about abortion, why the debate was so focused on abortion. In the Washington Post this morning—I might answer the Senator from Maryland by saying this—here is what President Clinton said:

Make no mistake about it, this was not a vote about the right of a President to choose a Surgeon General. This was really a vote about every American woman's right to choose.

That is why it is about abortion, because the President is making it about abortion, because he wants this kind of thing to occur.

Mr. President, I am confident that when the votes are counted, it is going to be the same result as yesterday, and Dr. Foster will not be the next Surgeon General.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from Washington.

Mrs. MURRAY. I yield myself 1 minute, and then I will yield to my colleague.

Mr. President, I am appalled and shocked that there would be this kind of display on the floor of the U.S. Senate. Certainly, Dr. Foster has made it very clear, as Senator MIKULSKI explained to all of us, that he does not support third trimester abortions, that he does not support abortions for sex selection, nor does he support illegal abortions.

I think it is really outrageous that guilt by association occurs on the floor of the Senate. I think the American people deserve a debate with dignity. I think Dr. Foster deserves a debate with dignity, and I hope that all of us can remember that.

Again, I remind you, Dr. Foster's nomination is in front of us because he is a man with a tremendous history of service—community service—delivering more than 10,000 babies, and I think that is what we should be debating today.

I yield my colleague from New Jersey 2 minutes.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I thank the distinguished Senator and urge her to continue her quest to see that fairness is finally delivered on this floor. I am astounded by what we have just seen. I assume that the pictures that we saw reflect a woman's decision, that she chose to have that abortion. You can make it look as ugly as you want. But the fact is that it is a medical procedure, and this woman chose to have it. This same Senator—a distinguished Senator and a friend of mine—from New Hampshire voted the other day and led the fight to take helmets off motorcycle riders. They could be laying all over the road, and they wind up in a hospital as paraplegics and quadriplegics, and we pay for it. That is OK. But to permit a woman who, under the law, has a right to make a choice, no, no.

Here we are watching a small minority deciding how the behavior of the majority ought to perform. This is an outrage. Yes, this is about abortion because the other side made it about abortion, instead of taking this man with superb credentials, who did what he had to under his oath as a physician and under his compassion as a human being. He obeyed the law and delivered excellent service. Over 10,000 babies delivered. The Senator from New Hampshire wants to pick out a procedure that was required and make that the subject of this discussion.

No, it is a narrow minority who says to the women across this country that you have no right to choose, even though the law says so. In his very statement, he said that. He said if we had a Surgeon General who spoke against it, then it would be OK with

this Senator and those whom he represents—Senator GRAMM and the others.

This is an outrage. What we are witnessing here is the truth about this issue. This has nothing to do with Dr. Foster. This has to do with politics, raw politics. I appeal to the people across this country, if you think you are being dealt with fairly, just look at what took place: Decrying a law that is on the books and a physician for doing his duty. We ought to get a couple of friends here with enough courage to stand up and say we are not going to take it anymore and we are going to vote on behalf of the women in this country.

Mrs. MURRAY. Mr. President, I yield my colleague from Illinois 4 minutes.

Ms. MOSELEY-BRAUN. Mr. President, everybody is talking about what the issue is here. I think there are a number of American people who think that the only real issue is fairness. It is whether or not a minority of this body will stop this nomination, using the time-honored trick of the filibuster in order to enforce an extreme agenda on the President of the United States through his nominee. It is just that simple.

The extreme agenda, I think, is pretty evident. I have never seen anything as horrific, as horrendous, as awful, as ugly and graphic as the posters and the doll figure I saw on the floor a few minutes ago. It is outrageous to bring something like that on the floor of the U.S. Senate to make whatever point. Whether you are for or against choice, to bring that kind of graphic depiction of ugliness on this floor, I think, only serves the purpose of inflaming people around an issue that really inflames and divides the American people, and that does go to the heart of the opposition's extreme agenda here.

People who say the Supreme Court was wrong in terms of Roe versus Wade are finding 9,000 ways to overturn it in subtle ways. People who do not believe that a woman has a right to choose—by the way, everybody is entitled to their own view on that issue. American people are and will be divided. That is a profoundly divisive issue in our body politic. But the question is: Why would that profoundly divisive issue be applied to Dr. Foster's nomination?

Here is a man who is not an abortionist. He is a woman's doctor. He has delivered tens of thousands of babies, and he has made the point that he supports the laws in terms of a woman's right to choose, but that is not his practice and never has been. Dr. Foster has played by the rules, has promoted women's health over the years, and he has a stellar background.

I join my colleague from New Jersey in saying that this really is a nomination now that is wrapped up in games and politics. Indeed, I will go as far as to say that Dr. Foster is a political hostage to extremism. That is the issue here—whether or not we are going to allow that extremism to derail this

nomination through use of the filibuster, or whether we are going to allow this man to have a majority vote of this body. Fifty-seven Members of this body, yesterday, voted to allow the nomination to come to a vote. That is more than half. That is more than a majority. What it is not is enough to overcome the time-honored trick of the filibuster. It is continuing that filibuster that is at the heart of the vote that will take place this afternoon.

I urge my colleagues to strike a blow for fairness and say to the American people that we are prepared to allow a majority to rule in the U.S. Senate, like it does on other matters—the budget, the appropriations, and all the other things we do. Let us say we are going to allow the majority vote to prevail regarding this nomination for the President's administration.

Dr. Foster was nominated by the President over 136 days ago. We have been sitting here in the U.S. Senate with all of the public issues we have before us—violence and crime, the issues in the communities, AIDS, you can go down the list—and they have not been attended to. Why? Because of the politics of abortion and politics of the Presidential campaign. I say let us free Dr. Foster and have his nomination vote take place today.

Mrs. KASSEBAUM. Mr. President, I yield 10 minutes to the Senator from Texas.

Mr. GRAMM. Mr. President, I thank the distinguished chairman for yielding. We are coming down to the final moments of the debate. We will have our final vote here in a few minutes.

I would like simply to review the key issues. First of all, let me address the issue of the cloture vote. To listen to our colleagues, it would sound as if we never vote on cloture in the U.S. Senate. Yet, hardly a week goes by that we do not have a cloture vote. It is part of the fabric of American democracy. It was part of the process making the Senate the deliberative body of Congress that George Washington described to Thomas Jefferson when Jefferson came back from France. Thomas Jefferson had been the American Minister to France while the Constitutional Convention was occurring.

Our colleagues talk about cloture votes and filibuster. Yet, since 1968, 24 times we have had cloture votes on nominations, and nearly every one of them occurring when we had Democratically controlled Congresses.

The way our system works is, if there is a determined minority, that minority has the right to speak in the U.S. Senate. There is, today, a determined minority. And to accommodate the Senate, an agreement was worked out so that the proponents of this nomination had not one vote, but two. That was agreed to by unanimous consent. Any Member of the Senate could have objected. No one objected. So this is a process that we chose and that every Member agreed to. This is a process that we all understand, and it is a proc-

ess called "democracy." It has served us well in the past. It will serve us well today when we reject this nomination.

I remind my colleagues that there was a Democratic effort to stop the confirmation of Chief Justice Rehnquist of the Supreme Court. That nomination went to a cloture vote. In that case, cloture was invoked. But the point was somebody on the Democratic side of the aisle felt so strongly about that nomination to one of the three most important offices in the land—the head of an entire branch of American Government—that they exercised their right. Many people did not like it, but that is how our system works. In that case, the process worked. We invoked cloture. Judge Rehnquist was confirmed. And in this case it is going to work as well. We are not going to invoke cloture, and Dr. Foster is not going to be confirmed.

Now, let me address the issue of Dr. Foster's credentials, and let me make it very clear that there is absolutely nothing in this debate that has anything to do with anything other than his qualifications to hold this office. There are two principal qualifications that our colleagues go on and on about with Dr. Foster. No. 1, he was the department head at a medical school in America. That is true. It is also true that the department he headed lost its accreditation while he was head of that department. Was it his fault? Were there extenuating circumstances? Were there other factors involved? Certainly there were. There always are. But the bottom line is that he served as the department head of a department that lost its accreditation.

The second argument given is that he established a program with a wonderful name, "I Have a Future." That program's stated goal was to reduce teen pregnancy. Our colleagues make a big point that this program was given a Point of Light Award. It was given that award because of its objective, a noble and great objective, and one that we need to promote all over America. But the bottom line is there were two objective assessments of that program, and both of them were made after it was given this award. Both evaluations concluded exactly the same thing: This program did not in any statistically significant way reduce teen pregnancy among those who participated in the program.

I said it yesterday. I will say it again today. And every Member of the Senate knows it. If we had set up a distinguished panel of physicians to go out and look at qualifications of physicians in America and to come up with a list of 1,000 physicians who were eminently qualified to hold the position as America's first physician, Surgeon General, Dr. Foster's name would not have been on that list. I do not think anybody here believes that Dr. Foster is qualified to be Surgeon General when considering his two major credentials: One being the head of a department that lost its accreditation; the other being

the director of wonderful-sounding program with a noble objective which, according to two objective assessments, proved totally ineffective in promoting those objectives.

Because it has been the focal point of the debate, as it should be, I am not going to get into again the problem of Dr. Foster's credibility. Maybe it was his fault, maybe it was the White House's fault, maybe it is failing memory, maybe it is simply a lack of understanding of the political process and how it works. But the bottom line is, on virtually every issue that has been raised, there has been a problem of credibility.

Finally, on the whole issue of abortion. I did not see the presentation that my dear colleague, Senator SMITH, made about partial-birth abortions. Maybe some people were offended by the presentation. But I am offended that this is happening in America. I think people do have different views on abortion, and I respect the opinion of people who disagree with me.

But I think it is an extreme view when you take the view which Dr. Foster takes, in opposition to parental consent in cases involving abortion and minors. Polls show that is an extreme view; 80 percent of the people in America think that parents ought to be notified when abortion is going to be performed on a minor. I think it is an extreme view when a child is in the process of being born, and its life is extinguished. I think it is an extreme view that when a lady is being taken down the hallway toward the delivery room, that it is perfectly acceptable in America to make a left turn to perform an abortion. The American people, by a margin of over 70 percent, think that is an extreme view.

Why filibuster? Why force a 60-percent vote? The answer to that is very, very simple. A lot of us felt very strongly about Joycelyn Elders. When I read the things that she had said about the Roman Catholic Church, when I read the her comments which made her sound more potentially successful as a radio talk show host than a Surgeon General of the United States, when I looked at how extreme her views were, I did not think she ought to have that job.

But this was the President's first nomination for this position, and there was no way of knowing in advance exactly what she would be like. I voted no; I opposed her nomination; I fought it; I wanted to defeat it, but I did not use the power that the minority has in the Senate, and that is the power to debate. Having made that mistake on Joycelyn Elders, I and others were determined that we were not going to make that mistake again.

I believe Dr. Foster is not qualified for this position. I believe that there are real credibility problems concerning the facts that have been presented to the country and the Congress. And

finally, I believe that his views are radical and outside the mainstream of American thinking.

Yesterday, I quoted our President four times from his campaign, talking about the values of our people, talking about family values, talking about traditional values. I do not believe that Dr. Foster's views match the President's 1992 campaign rhetoric.

I think one thing we have a right to expect Presidents to do once they are elected is to put forth nominees whose views are consistent with their campaign rhetoric. We have a right to expect that those campaign views will be reflected in their nominees. Do not get me wrong. When people voted for Bill Clinton, they voted for more spending, more taxes, more regulation, more Government, and for the appointment of liberals. If they did not know it, they should have known it. That is what democracy is about.

But they did not vote for the radicals that this President has appointed. This is an appointment where the views of this candidate are outside the mainstream of American thinking, and I believe we are making the right decision in saying no.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I thank the Chair and I thank the distinguished manager.

I do not know whether this debate is more about politics or more about abortion or exactly what it is about. But I do not truly believe this debate is about Dr. Henry Foster. There are two Henry Fosters: The one that is depicted and portrayed by his opposition; and there is the real Henry Foster, a man of deep compassion and certainly a man of great ability.

There have been a lot of articles written, a lot of stories on TV and radio and in newspapers, about who is winning in this Foster fight; whether it is one of the candidates for the Republican nomination for President or the other candidate.

Mr. President, I can say the loser in this fight, if we do not get 60 votes today, will be the American people. It will be the American people who are going to be the great loser if we do not confirm this man.

He has stated time and time and time again his position on abortion is very, very simple: That they should be safe, that they should be legal, and that they should be rare. That is his position on abortion.

I urge my colleagues to vote for this splendid man as our next Surgeon General of the United States.

Mr. President, it gives me great pleasure to support the nomination of Henry W. Foster Jr., M.D. to one of the most important health care posts in our Government, Surgeon General. As

you know, the Surgeon General is the national spokesperson to promote good health activities and to alert the nation regarding things that are harmful or potentially harmful. In May, Dr. Foster convinced the Labor and Human Resources Committee that he was the right man for the job.

Today, I am here to explain to my colleagues why I know Dr. Foster is the right person for that job. To reiterate, soon after I set out to learn more about our nominee for Surgeon General, I realized that there are actually two Dr. Henry Fosters. One is the Dr. Foster created by inside-the-beltway groups using diversionary tactics to derail the nomination of a respected physician. The other is the Dr. Foster who grew up in Pine Bluff, AR, attended University of Arkansas as the only African-American in his class, served his country as a medical officer in the Air Force, and set up a practice in Tennessee where he trained hundreds of the nation's finest medical practitioners.

Mr. President, I am here to tell you that I am convinced that this second Dr. Foster is the real Dr. Foster. For those who doubt this and want to see something tangible, I urge you to visit Nashville to see his accomplishments, such as the doctors he trained, the day care centers he created, and the individuals, young and old, he has delivered into this world over his many years of practice.

I would be remiss if I did not mention one of Dr. Foster's greatest accomplishments, his I Have a Future Program, a pioneering effort to reduce the number of teen pregnancies by improving teens' self-esteem. As you may know, President George Bush named Dr. Foster's program as one of American's Thousand Points of Light in 1991. President Bush's own Secretary of HHS, Dr. Louis Sullivan, has lauded Dr. Foster's nomination.

Let me also talk about what Dr. Foster's peers say about him. The American Medical Association, the American College of Obstetricians and Gynecologists, the National Medical Association, the American College of Preventive Medicine, are just some of the professional organizations that have come out in support of Dr. Foster.

Mr. President, in addition to letters from his peers, I have also gotten letters from other groups. One organization, the Council for Health and Human Service Ministries of the United Church of Christ wrote:

We are people of faith, committed to promoting and maintaining optimum health of all people. We believe that the professional credentials and experiences of Dr. Foster are impressive and provide sufficient evidence of his ability to be the nation's spokesperson on matter of public health policies and practices.

In sum, Mr. President, let me make these points about Dr. Foster:

He is a practicing physician, a scholar and academic administrator of national stature, and a community leader.

Dr. Foster is a skilled communicator who emphasizes consensus-building over confrontation.

Dr. Foster has bipartisan support.

Dr. Foster is one of the nation's leading experts on, and advocates for, maternal and child health, and has developed and directed teen pregnancy and drug-abuse prevention programs that bolster self-esteem and encourage personal responsibility.

Mr. President, let us look at the Dr. Foster from Tennessee, the man who has done so much for people who others have ignored. Let us follow the Labor and Human Resource Committee's lead and confirm Dr. Foster's nomination.

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 2 minutes.

Mrs. BOXER. Mr. President, I was not going to take the floor back, but I have to respond to some of the things done and said on this floor. I feel very strongly that it is my responsibility as a U.S. Senator from the largest State in the Union to the say a couple of things here.

No. 1, to my colleague from Texas, people in America want a fair President. This is not fair. To deny this man a vote is not fair—period. And then to keep bringing up Joycelyn Elders. I do not say about my colleague that he is like Richard Nixon or he is like Herbert Hoover. If I agree with him, I agree with him because it is him. I do not say he is like someone else. So let us cut it out. If you want to fight a guy, fight it on fair terms.

My colleague from New Hampshire shows us pictures meant to divide this country. He shows us pictures that should never be shown in front of the Senate pages who sit here. They should have been spared that. You want to outlaw abortion? You want to make it a crime? You want to put women in jail for having them? You want to put doctors in jail? Bring the legislation to the floor. I will debate with you toe to toe—toe to toe. And I will win that battle because, thank you very much, the women of America do not want Senators telling them how to handle their private lives.

I am always amazed that the very people who say get Government out of our lives want to put Government in the bedrooms of the women and men of this country.

You are out of the mainstream, and you are stopping this nomination with a minority vote here. It is wrong to do that.

I want to end my remarks with a positive picture—and I wish I had it—of 10,000 little babies.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. May I have 30 additional seconds?

Mrs. KASSEBAUM. Mr. President, I yield the additional time.

Mrs. BOXER. I thank my colleague.

If I had only known we were going to do this picture situation, I would have tried to get the picture of thousands of new babies—10,000 brought into the world by this physician who went into the Deep South, where no one would go, who turned around the infant mortality rate. Did you ever see a picture of a baby who was born without prenatal care? I will tell you about it. I happen to have one. I have two who were born premature with prenatal care. But I want to tell you, it is not a pretty picture. They have tubes up their noses. They suffer. They struggle. They get high bilirubin. They turn yellow. And I will never forget, before my baby was born prematurely, I remembered then President Kennedy had a baby that was born prematurely. It is not a pretty sight.

He turned it around. He showed those pictures. Dr. Foster never performed a late-term abortion that was not to save the life of the mother. That is on the record. It is an unfair thing to do to this man.

I urge my colleagues, in light of those pictures, to change your vote, show that you have a conscience, and stand up for what is right and just.

I yield the floor.

Mrs. KASSEBAUM. Mr. President, I yield 15 minutes to the Senator from Ohio.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized for up to 15 minutes.

Mr. DEWINE. Mr. President, I rise today to discuss the nomination of Dr. Henry Foster to be Surgeon General of the United States.

The role of the Surgeon General is to be a public advocate—to persuade Americans to change their private behavior and lead healthier lives. That is why the credibility of the Surgeon General—his or her ability to communicate with the American people—is vital to his success in that job. The Surgeon General has to be able to connect with the general public in a truly personal way.

To do this, the Surgeon General has to be sensitive to people's real concerns. He cannot be someone who appears to shrug off important issues.

That is why Dr. Foster's record on the very important issue of sterilizations is so troubling.

What are the facts? The facts are that in the early 1970's, it was becoming increasingly clear, to a broad public, to the medical profession, that mentally retarded individuals needed special protections—to prevent abuses of the practice of sterilization.

In 1970, the American College of Obstetricians and Gynecologists issued the following statement of policy:

If an operation to accomplish sterilization is recommended by the physician for medical indications, the recorded opinion of a knowledgeable consultant should be obtained.

Four years later, in 1974, Dr. Foster wrote an article in which he said—and I quote: "Recently, I have begun to use

hysterectomy in patients with severe mental retardation."

The operative words are "recently" and "begun."

"I have recently begun".

In a written inquiry, I asked Dr. Foster whether he had obtained the recorded opinion of a consultant prior to performing those hysterectomies. His answer was—and I quote—"I do not believe I obtained the recorded opinion of a consultant."

But he adds:

I believed that \* \* \* the manner in which they were performed was fully consistent with prevailing rules governing informed consent.

Dr. Foster is now—and was then—a member of the American College of Obstetricians and Gynecologists. But in response to my question, Dr. Foster said he believes that the policies of the American College of Obstetricians and Gynecologists simply are not binding.

I have a problem with that. I think that the position of the American College of Obstetricians and Gynecologists—their insistence on a recorded opinion from a consultant—should not be dismissed so cavalierly. Indeed, the whole trend of history was moving toward protecting the rights of the mentally retarded, and away from Dr. Foster's position, at the time he wrote that article.

Let me add a few more comments to put it into really historic context.

In 1972, a Federal district court—in the case of Wyatt versus Stickney—had placed Alabama's institutions for the mentally ill and mentally retarded under sweeping and detailed court orders forbidding experimental research and certain kinds of treatment without express and informed consent.

In June 1973, two girls—ages 12 and 14—were surgically sterilized in Montgomery, AL.

Without going into all the details, it was an absolutely shocking set of facts.

When the sterilizations came to light, there was immediate public reaction—and a move toward nationwide reform. By the end of that same month—June 1973—there was already a lawsuit filed. In the following month—July 1973—Senator EDWARD KENNEDY held hearings on this controversy. The Secretary of HEW announced that new regulations on the use of Federal funds for sterilizations would be published within weeks.

And the regulations were published. They sought to protect the rights of all persons—including the mentally retarded—with respect to federally funded sterilizations.

These regulations never took effect, because in 1974 a Federal district court found—in the case of Relf versus Weinberger—that HEW had no authority to perform any nonconsensual—that is what we are talking about, nonconsensual—sterilizations whatsoever.

On January 8, 1974—the very beginning of 1974—Federal District Judge Frank M. Johnson, Jr., issued an order that specified the procedures that

would have to be followed in cases of the sterilization of institutionalized mentally handicapped individuals. Judge Johnson required that any sterilization would have to be approved by the director of the institution, a review committee, and the court.

That was January 1974.

That tells us a little bit about what the climate was.

That was the moral and legal climate in which Dr. Foster was justifying and defending the practice of sterilizing mentally handicapped women.

In the summer of that same year—months after the decision by Judge Frank Johnson, and a year after the Kennedy hearings—Dr. Foster made his statement that he had "recently \* \* \* begun to use hysterectomy in patients with severe mental retardation."

The physician—even more than the average citizen—owes what our Declaration of Independence calls "a decent respect to the opinions of mankind." That is why Dr. Foster's responses on the issue of sterilization gives cause to me for grave concern. They lead one to believe that Dr. Foster can be tone deaf to some very important issues.

It is one thing to have a controversial position on some issue. It is something else entirely when someone chooses to remain totally indifferent to the moral controversies of his time.

If you are going to be Surgeon General, you have to be able to reach people. You have to be sensitive to them. You have to care about what is going in their hearts and their fundamental moral sensibilities.

Dr. Foster, as I have said on several different occasions, Mr. President, is a good man. He is a caring person. He is a loving human being. That is not the issue. I believe, based upon the hearings, on my own conversations with him, on his responses to my written questions, that Dr. Foster simply cannot adequately perform this job; that he cannot use the job of the Surgeon General of the United States to its fullest capability; that he cannot use it as the bully pulpit that it should be used as; that he cannot maximize the great potential that office has.

That is why I will again today vote no on his nomination.

I yield the floor.

Mr. BRADLEY. Mr. President, I rise reluctantly today to join the debate on Dr. Henry Foster's nomination as Surgeon General. I am reluctant because this has gone on too long; there should not be such fierce opposition to a candidate so clearly qualified as Dr. Foster. However, the debate continues, and I feel it is important to point out his qualifications, and thereby separate the germane issues from distractions, wordplay, and rhetoric.

The facts of Dr. Foster's career speak for themselves. His work at Meharry Medical College, his service for a long list of organizations, including the March of Dimes Foundation and the

American Cancer Society, are evidence of his dedication and professionalism. His I Have a Future Program has helped young men and women leave housing projects and embark on field trips, jobs, and college educations. The program was aptly chosen as No. 404 of the Thousand Points of Light. Who can deny that teaching job skills, self-esteem, communication skills, and counseling for at-risk youths is a light in these troubled times? Who can question the values of a man who builds up a community, provides support for teenagers, and encourages family participation in crucial life decisions?

Dr. Foster was there for the teenagers of Nashville when their decisions were anything but simple. Violence, pregnancy, drugs, and poverty are problems that faced these youths, and which face us here today. We have a chance to provide America with a Surgeon General who has said that as the People's Doctor, he would try to "replace a culture of hopelessness with one that gives young people a clear pathway to healthy futures." We can debate endlessly, lamenting the lack of values in America and condemning violence, but when we prevent Dr. Foster's nomination, we prevent him from continuing and expanding his fight against today's problems.

Dr. Foster has used his position as a medical doctor and an educator to encourage abstinence and to give teenagers hope for the future, so that they will take the responsible path. He has used his knowledge and his expertise to bring adolescent health services to places where they are desperately needed. He has performed a function beyond the call of a traditional physician. In his own words, his work "involves the entire families and the total social matrix of the surrounding community."

In holding back this nomination, we hold back possible solutions to problems which face all of us, problems which will not be solved without work like Dr. Foster's, problems which will not go away, and problems which will not wait for political delays.

We must listen to the facts in this case. By now, we are all familiar with Dr. Foster's outstanding achievements as a doctor, an educator, a scholar, and a community leader. We know that Dr. Foster has the support of the American Medical Association, the American College of Obstetricians and Gynecologists, the American College of Physicians, the Association of American Medical Colleges, and hundreds of other respected institutions and individuals. We cannot ignore the letters which pour in from informed organizations like these, all supporting Dr. Foster, and all condemning the politicization of this issue. We should look at Dr. Foster's numerous achievements, instead of creating a smoke-screen of accusations. We should confirm Dr. Foster, and allow him to continue his hard work for at-risk teenagers, for families, for each and every one of us in this Chamber, and for this country.

Mr. FRIST. Mr. President, I ask unanimous consent that the following statement of support for Dr. Henry Foster's nomination as Surgeon General be printed in the CONGRESSIONAL RECORD. The statement was presented on May 26, 1995, at the Labor and Human Resources Committee vote on the nomination, and fully explains my reasons for supporting this nominee.

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

STATEMENT BY SENATOR BILL FRIST ON DR.

HENRY W. FOSTER, JR.—MAY 26, 1995

Last November, the people of Tennessee elected me to make difficult decisions. And this has been a decision I've struggled with. I know that thoughtful people honestly and fundamentally differ on whether Hank Foster should be Surgeon General.

What makes my statement different from those you have heard today? I know Hank Foster. I know him as a fellow Tennessean. I know him as a fellow physician and colleague, who worked 4 miles from my office. We are both members of the Nashville Academy of Medicine, on whose Ethics Board he has served. And I know him as a fellow Nashvillian, who has done what few physicians do—step out of the clinic into their community to address the really tough problems in our society.

Since February 2, the day the President announced his choice, I've listened carefully to every conceivable argument for and against the nominee. And over the past 3 months, I've done my very best to remain neutral—neither to blindly endorse Hank Foster because he is a fellow Nashvillian, nor to condemn him because of allegations drawn from the attics of his past. I have waited until final testimony was submitted just last Friday so that I could thoughtfully, and carefully, consider every aspect, every ramification, of his nomination. Several days ago, I again met with Hank Foster—one-on-one, face-to-face—to specifically and directly ask him about his plans as Surgeon General.

I asked him the tough questions. Would he be like his predecessor, Dr. Elders? Would he allow himself to be used as a political tool for an out-of-step President, who time and time again has promoted radical agendas? Or would he represent mainstream America and family values?

Dr. Foster told me, without hesitation, that his number one goal was to reduce teen pregnancy—a problem that we as a people have done a miserable job addressing. It's a problem that literally threatens the very fabric of America. His approach? He looked me straight in the eye, and said "number one, build self-esteem; number two, promote abstinence; and number three, instill family values."

He told me that the other main issues on his agenda would include screening for breast cancer and prostatic cancer, addressing the AIDS epidemic, and teenage smoking. Dr. Foster stressed to me that he places primary emphasis on family, that he understands the importance of leading by building a consensus, and that he understands that his agenda as Surgeon General must appeal to, and be embraced by, mainstream America.

Madam Chairman, many have told me that this nomination is no longer about Hank Foster, the man. They say it's about the inept way in which the Administration has handled his nomination. They say it's about the tardy and roundabout manner in which information has been provided to this Committee and to the American people. They say

it's about a radical social agenda that is beyond the bounds of mainstream America and traditional values.

But, I don't buy it. I guess as a newcomer to this body, I see it all very differently. I believe it is about Hank Foster, the man—the man who had delivered thousands of babies into this world; the man who has committed his life not to making money, not to promoting himself, but to serving others' needs; the man who has cared for and nursed to health thousands of women; the man who in addition to the practice of medicine, has courageously and unselfishly stepped out into his community to give others a chance to step out of a world of poverty; and the man who 4 days ago, looked me in the eye and described a fundamental commitment to the principles of self-esteem, personal responsibility, and family values.

As I stated at the Committee hearings, it should not be our purpose to search for every possible mistake or imperfection in Hank Foster's life. The question before us is a much more narrow one: does this man have the commitment, the intelligence, the training, the honesty, and the integrity to be the chief spokesman for Americans on matters concerning public health? These are the issues that I've considered, and I'm satisfied with what I've seen and heard.

Having known Hank Foster as a fellow Tennessean, having heard his testimony, having had the opportunity to talk to him extensively face-to-face, and having considered every aspect of his nomination very carefully, I believe his nomination should be referred out of Committee favorably and brought before the U.S. Senate. And I also believe we should move forward with this process. We've got a lot of important business to attend to and the American people want this Congress to press on.

Madam Chairman, I think it is also important to mention, as I did in the Committee hearing, my belief that this confirmation process is not the place or the time to revisit our national policy on abortion. Americans of conscience will remain deeply divided over this issue regardless of who is appointed Surgeon General. It's important to remember that the office of Surgeon General does not set social policy, nor convey with it the right to vote on any legislation—whether affecting abortion or otherwise. When this body confirmed Dr. C. Everett Koop as Surgeon General, a staunch opponent of abortion, that confirmation did not outlaw abortion. If this body confirms Hank Foster, that confirmation won't condone abortion.

No doubt, the unfortunate events that immediately followed Hank Foster's nomination cast a shadow on his viability to be Surgeon General. Conflicting information raised questions about his credibility. I, too, was angered that the Clinton Administration had badly mishandled yet another nomination by failing to adequately prepare Dr. Foster—a physician who had never had to face such aggressive public scrutiny.

Questions arose about Dr. Foster's ability as an administrator, his involvement in 4 hysterectomies performed 25 years ago, and his knowledge of a study on black men conducted over a 40 year period in rural Alabama. These issues concerned many, and each and every one concerned me. But I believe that Hank Foster's testimony, evidence submitted to the Committee, and my own one-on-one interviews with him, put to rest those concerns.

Dr. Foster, I feel, came through the hearing process with his credibility and integrity intact, and with his qualifications to be Surgeon General apparent.

In the end, when people ask me why I support Hank Foster's nomination, I'll tell them simply because he's qualified to carry out the duties of Surgeon General. I am confident that he will perform his job well.

Finally, Madame Chairman, I ask my colleagues to consider this nomination, not based on politics, but rather on qualifications and ability. In the past, the Democrats have so often brought politics into the equation—we all remember the nominations of John Tower, Robert Bork and Clarence Thomas. I wasn't here, but as a private citizen, I recall the anger I felt and the disappointment in the process. Let us not make the same mistakes. The American people are tired of politics as usual—that was the message of November 8.

For that reason, I urge all of my colleagues to view this candidate away from the distractions and the hype of political expediency, and without regard to who nominated him. Rather, look at his accomplishments, his qualifications, his statements, his goals, and the testimonials of other who know him. And then—based on serious reflection—make your decisions.

I've done that, and I choose to support Dr. Henry Foster.

Mr. CRAIG. Mr. President, the concerns that have led me to oppose the nomination of Dr. Henry W. Foster, Jr., to be Surgeon General of the United States are not trivial. They are also not intended as a criticism of the nominee personally. He is a fine individual and deserves our respect.

However, in deciding whether to support a nominee, character cannot be the only consideration. We must also examine the nominee's ability to serve the American people in the office to which he or she was nominated.

It is important to note that my decision to oppose the nomination of Dr. Henry W. Foster was made after a great deal of thought and consideration. I do not take lightly the responsibility of the Senate in confirming Presidential nominees. Nor do I take lightly the right of the President to nominate individuals who share his philosophy. My own philosophy, opinions or views have run contradictory to most of the nominees presented by this administration. However, I have opposed very few of those nominees.

Mr. President, as I have noted, I have concerns about Dr. Foster. I do not agree with him on a number of issues, including abortion. However my opposition on his confirmation is not based on differing opinions. I am opposing Dr. Foster's nomination because the many problems surrounding his nomination are issues that will be divisive.

An individual can have many fine qualities and excellent experience and yet not be qualified to serve as a public official in the position of Surgeon General. That position, sometimes referred to as "America's Family Doctor," requires someone who also has the ability to bring groups together to work toward resolving the health problems of this Nation. To his credit, Dr. Foster has some fine qualities and experience. I do not dispute that fact. However, the controversy surrounding his nomination, the disclosure—or lack of disclosure—of the number of abortions he

has performed, as well as the questions surrounding his knowledge of the Tuskegee syphilis study lessen his ability to bring Americans together on the multitude of health issues our Nation faces.

Mr. President, the role of Surgeon General requires the ability to bring people together, not to be divisive. The controversy surrounding Dr. Foster's nomination has diminished his ability to play the unifier.

In addition, I would add that I have received numerous letters from Idahoans expressing concerns and opposition to the confirmation of Dr. Foster.

Therefore, I have decided to vote "no" on the confirmation of Dr. Henry Foster for the office of Surgeon General for the United States.

Mr. KOHL. Mr. President, some today have presented Dr. Foster's credentials and discussed his integrity. Others simply do not support the candidate. We have heard the arguments. We should be ready to vote—to go on record, yes or no, whether we approve of this nominee.

Unfortunately, Mr. President, some in this body do not want a vote on the nomination of Dr. Henry Foster. The debate we are now engaged in is not about the qualifications of the candidate for the job of Surgeon General. This is about a political game.

Machiavelli would enjoy how the Nation's business is handled in Washington, D.C. today. Bipartisanship is a word easily tossed around, but seldom practiced. The bottom line is how to prevail in the next election, not how to solve this Nation's problems.

Do we really think the best way to find qualified candidates to serve the United States Government is to pick apart their careers and their characters, groping for something that will justify a political end? Is that what faces all those who wish to serve their country?

Ever since the President announced Dr. Foster as the Surgeon General nominee, the Nation has witnessed a non-stop exercise in abusive politics.

For months Dr. Foster was attacked by those opposed to his profession and who questioned his integrity. Based on allegations by ideological factions and media scrutiny, some called for the nomination to be pulled before allowing Dr. Foster a chance to respond. That is not how this body should consider Presidential nominations. Nominations should proceed in a fair manner, allowing candidates to fully present their story.

We should debate those whose views differ from our own. That is called Democracy. But I do not believe every event in a person's life should be held under a national microscope—especially when the person in question has no chance to respond. That is called persecution.

Fortunately, Dr. Foster finally received a fair hearing in the Labor and Human Resources Committee. He responded well to questions raised about

his background and proved to be an honest, caring and dedicated individual.

After all that Dr. Foster and his family has endured in the past several months, does he not deserve a vote?

Dr. Foster has committed his life to helping others and promoting public health. He is well respected by his professional peers and those whose lives he has touched through community service. In short, this candidate is qualified to serve as Surgeon General and deserves a final decision.

The Labor Committee approved of Dr. Foster and passed his nomination. It is now time for the full Senate to exercise its responsibility. I urge my colleagues to end this sad political spectacle and vote on the nomination of Dr. Henry Foster.

Mr. HATFIELD. Mr. President, yesterday I voted against limiting debate on the nomination of Dr. Henry Foster as Surgeon General of the United States. It is my intention to do so again today.

I will vote against cloture today because I am disappointed by the handling of Dr. Foster's nomination and because I do not believe debate should be limited before it begins. This is a misuse of the cloture motion. Cloture should be a tool of last resort rather than a tactic employed as soon as an issue hits the Senate floor.

In addition, I believe it is improper to raise a single issue and use it as the litmus test for the nomination of a Surgeon General. The President did that yesterday by stating that this vote was really a vote about abortion. I am deeply disappointed that the debate has come to this.

The Surgeon General serves an important role as the national spokesperson on matters of public health. Over the years we have seen individuals serving in their capacity as Surgeon General make important statements on the health effects of smoking, the spread of AIDS, and teenage pregnancy. This person often becomes a lightning rod for controversy.

In recent years, a number of individuals who have been nominated as Surgeon General have been controversial figures. Their nominations did not pass the Senate without a full debate. Dr. Foster's nomination is controversial. Much of the initial information provided to the Senate was misleading or inadequate. In addition, there are a number of issues that have been raised relating to Dr. Foster's qualifications to serve as Surgeon General and I believe that both sides should have an opportunity to fully debate these issues.

Mr. BINGAMAN. Mr. President, I rise to express my strong support for the confirmation of Dr. Henry Foster to be Surgeon General of the Public Health Service. In my view, it is time that the Senate put personal agendas and Presidential primary politics aside.

It is time we let Dr. Foster get on with the important job he has been preparing for throughout his professional

career: the job of chief public health advocate for our country.

Based on the public hearings held by the Labor and Human Resources Committee and the very detailed questioning those hearings involved, I have come to the conclusion that Dr. Foster is imminently qualified to serve as Surgeon General.

Just as Presidential politics should not define when and under what conditions the Senate conducts its business, neither should we in the Senate attempt to define, based on ideology alone, the boundaries of a Surgeon General's professional experiences.

We in the Senate need to focus on the real world we live in, not the world we wish we lived in. The reality is that our Nation has deplorably high rates of teen pregnancy, infant mortality, and poverty. Too many of our children are abused, troubled, hungry, and hopeless. Childhood violence and death due to suicide are increasing at alarming rates. Incidence of AIDS and other sexually transmitted diseases are increasing in every population in our country.

Statistics from my home State of New Mexico illustrate these facts in graphic detail:

We have the third worst rate of births to unmarried teens in the nation: From 1985 to 1992, the number of births to unmarried teens grew from 41.6 to 60.1 births per 1,000 females age 15 to 19. That is an increase of 44 percent over 7 years.

In 1991, 18,234 cases of child abuse were reported in New Mexico, an increase of 21.4 percent from 1990.

More than 10 percent of New Mexico's children live in extreme poverty, with family incomes below 50 percent of the poverty level; 27.2 percent of our children live in poverty, compared to the national average of less than 20 percent.

Nearly 40 percent—4 out of 10—of our children live in families with incomes 150 percent of the poverty level or less.

Our teen violent death rate, though declining, was still hovering at more than 70 deaths per 100,000 teens in 1992.

I could go on, but I believe I have made my point.

The real world is tough. The problems we face are tremendous. It will take a person who has faced reality and dealt with the problems he has seen with compassion and commitment to find solutions to the enormous public health challenges confronting our nation.

My impression is that Dr. Foster is such a person. His background as a practicing physician, a scholar, and academic administrator, and an advocate for poor children, combined with his proven ability to lead are evidence of his strength and compassion.

Dr. Foster has proven his commitment to public service and public health. He deserves to be judged by the Senate on his merits as a physician and an educator. And he deserves the opportunity to serve his country as the next Surgeon General.

Mr. FEINGOLD. Mr. President, I would like to express my support for the confirmation of Henry Foster as Surgeon General of the United States.

In making my decision to support Dr. Foster, I reflected upon many of the comments on this nomination that I have received from constituents in my home State of Wisconsin. Most Wisconsinites wish that fewer women had abortions, hope that fewer young women got pregnant unintendedly, and want sufficient access to comprehensive health care services for women and children.

Dr. Foster's capabilities and accomplishments in addressing women's and community health are noteworthy. He is a respected medical educator and president of Meharry Medical School. He is the past president of the Association of Professors of Gynecology and Obstetrics, and has been a leader in addressing teenage pregnancy issues in Nashville, TN. Lastly, by all accounts, he is a sincere, compassionate, and respected gynecologist who has delivered thousands of babies and seeks quality health care for women and their families.

All of us heard numerous opinions on the nomination of Dr. Foster. I have received letters from practitioners, leading medical education departments, and professional associations, and have heard nothing from the medical community which would impeach Dr. Foster's skills, abilities, and integrity. For example, when President Clinton nominated Dr. Foster, Dr. Douglas Laube, chair of obstetrics and gynecology at the University of Wisconsin-Madison wrote the President in support of that decision, and sent me a copy of his letter. Dr. Laube has personally worked with Dr. Foster for 7 years, serving on a number of national committees designed to develop the education of medical students and resident physicians in the United States. Dr. Laube writes "Dr. Foster's commitment to medical education nationally and his activities in Tennessee underscore the efforts of an altruistic and well-intentioned person." He continues, "In my personal dealings with him, and in my observations of his dealings with others, I can attest to his integrity, consistency, and dogged attention to detail. More importantly, Dr. Foster is a physician who has spent his entire career attempting to better the life of others while serving as a role model for countless medical students and resident physicians in training."

With his profession behind him, how, then, has all this controversy over Dr. Foster arisen? In his 37 years as an obstetrician and gynecologist, despite his work to reduce teen pregnancy, sexually transmitted disease and drug abuse, and his role in delivering more than 10,000 babies, Dr. Foster has also performed some 39 abortions.

I do not believe that Dr. Foster should be penalized for acting under the law. The legalization of abortion is an issue for Congress and the courts,

ultimately to be decided by the American people, and currently abortion is legal in this country. I have been very concerned that individual Members are using this nomination to express their personal views about abortion. The controversy over the number of abortions Dr. Foster performed, and his recollection of that number, is really a smoke screen designed to attack and demean Dr. Foster and other health care providers who are involved in providing comprehensive women's health care. The underlying message is that one can forget holding public office as a physician if you provide health services to women that includes abortion services.

As a practitioner, the decision to perform abortions is already risky enough. In January of this year, I joined my colleague, the Senator from California [Mrs. BOXER], in condemning violence at reproductive health clinics. I explained then that many of the doctors in my home State of Wisconsin have taken to wearing bullet proof vests to go to clinics to do their work. Are we now saying, that in addition to enduring the threats of stalking, bombings, and shootings, physicians like Dr. Foster must also pay the public political price of ostracism and denouncement of professional credibility?

Despite the controversy surrounding his nomination, Dr. Foster conducted himself in the Labor and Human Resources Committee hearings in a manner which convinces me both of his skill as a communicator and his compassion as a practitioner. I believe he was responsive to questions asked of him, and that he clearly explained his practice record including his tenure and involvement at Meharry in Nashville, at Tuskegee in Alabama, and now on sabbatical at the Association of Academic Health Centers in Washington, DC.

In sum, Mr. President, I have evaluated the entire body of Dr. Foster's record, and I believe him to be well qualified for this position. I also generally believe that the President is entitled to select key members of his administration and due deference should be paid to his choice, where the individual is qualified to serve. I will cast my vote to confirm Dr. Foster, and I admire throughout all the controversy his continued commitment and desire to serve our country in this capacity.

Mr. GLENN. Mr. President, I rise today in support of Dr. Henry Foster for the post of Surgeon General of the U.S. Public Health Service.

Since his nomination several months ago, Dr. Foster's public and private history has been subjected to an exceptional level of public scrutiny, and has become a pawn in an unfair political game. I believe it is a compliment to Dr. Foster's character and achievements, that when given the opportunity to answer his critics, a majority of the Labor and Human Resources Committee voted to forward his nomination to the full Senate.

Mr. President, after reviewing the testimony presented at Dr. Foster's hearing and examining his credentials and accomplishments, I strongly believe that Henry Foster possesses the skills and experience necessary to address the many public health challenges that face our Nation.

During his 38 years as a practicing obstetrician-gynecologist, Dr. Foster has received national recognition as a scholar, academic administrator, and advocate for maternal and child health. He has devoted much of his career to educating medical practitioners at Meharry Medical College—serving as a professor, department chairman, dean of medicine, and president. As a practicing physician and educator, Dr. Foster chose to work with low-income families and children who might not otherwise have access to health care.

Dr. Foster was a pioneer in the movement to introduce the concept of responsibility to at-risk youth. This concept has received a lot of attention in Congress lately. In 1988, Dr. Foster founded the highly successful I Have a Future Program devoted to preventing teen pregnancy and drug abuse. Unlike teen pregnancy prevention efforts which focus on contraception, the I Have a Future Program concentrates on improving self-esteem, cultivating a sense of optimism in the lives of disadvantaged young people, and providing incentives to delay sexual activity and childbearing. "I Have a Future" has won wide recognition from many sources, including the American Medical Association, and was designated as one of America's Thousand Points of Light by President Bush in 1991.

Mr. President, I regret that the vote on Dr. Foster's nomination has really come down to a vote on abortion. An individual's beliefs about reproductive choice, or the number of abortions performed during the course of a medical career, should not be a litmus-test for a nominee to the Surgeon General post. Through his delivery and care of over 10,000 children, commitment to research and education, promotion of healthy lifestyles, and efforts to prevent unwanted pregnancies, Dr. Foster has proven his dedication to improving the health of all Americans.

Dr. Foster has an outstanding private, public, and professional record. He is uniquely qualified to lead our Nation as an advocate for healthy and responsible lifestyles. Mr. President, this country has been without a Surgeon General for over 6 months and we now have the opportunity to confirm a man who will bring both experience and enthusiasm to our efforts to combat public health crises such as infant mortality, substance abuse, sexually-transmitted diseases, teen pregnancy, HIV infection, and others. Unfortunately, it appears that the will of a small minority will block a fair and democratic up-or-down vote on Dr. Foster's nomination.

Mr. President, I believe that Dr. Foster deserves more than a politically

motivated procedural vote. I strongly urge my colleagues to vote for cloture and support Dr. Foster's nomination to the post of Surgeon General of the United States.

Mr. FAIRCLOTH. Mr. President, much has already been said on the Senate floor about why Dr. Henry Foster is unfit to serve as Surgeon General. Yesterday, I voted against the petition to invoke cloture on debate concerning Dr. Foster's nomination. As far as I am concerned, nothing has happened since yesterday to cause me to change my opinion about Dr. Foster's qualifications to serve as Surgeon General. He was the wrong man for the job yesterday, and he is the wrong man for the job today.

Many have testified as to their personal knowledge that Dr. Foster is a fine man—a nice man. I have no reason to disagree with that assessment. Despite those testimonials, many—myself included—do not believe that we are conducting a congeniality contest to fill the vacancy created by Dr. Elders' forced resignation. In rushing to fill the position, the Clinton administration failed—once again—to do their homework and thoroughly investigate a nominee's qualifications for the job for which he is nominated. The saga of Dr. Foster is yet another in a long string of failed efforts by the White House to send to the Senate nominees who are prepared to fully disclose important information about their background—information essential for the Senate to exercise its constitutional duty to advise and consent on Presidential nominations.

After 2½ years in office, I would think that the White House staff would take more seriously their responsibility toward the Senate and toward administration nominees. Time after time, we in the Senate are subjected to unqualified nominees from the White House gang that can't shoot straight. How much longer will our Nation continue to tolerate this sort of negligence in office?

Yesterday, 43 Senators sent a clear message to the Clinton administration that we cannot support a nominee whose credibility is in serious doubt as a result of numerous inconsistencies in statements by Dr. Foster and the White House. Beginning on February 2 when the President nominated Dr. Foster, a steady stream of inaccuracies were uncovered concerning crucial details about his professional medical background. Either Dr. Foster has a selective memory disability or the White House early on concluded that the full truth about Dr. Foster would sink his chances in the Senate.

After hastily confirming other Clinton nominees like Ron Brown and Henry Cisneros, both of whom have serious ethical and possibly even criminal misconduct charges outstanding against them, it is incomprehensible that the White House would not more carefully screen its nominees. Mr. President, let us not forget that Presi-

dent Clinton originally promised that his administration would be the most ethical in American history. It is remarkable how far President Clinton has fallen from the mark which he set for his administration.

I will not recount the long list of inconsistencies in Dr. Foster's record. Suffice it to say, that any nominee with such a tainted record before the Senate is de facto unqualified to hold high public office in this Nation. President Clinton should never have nominated Dr. Foster and when learning of the many inaccuracies in information provided to the Senate, President Clinton should have withdrawn the nomination.

Many months have passed while the administration attempted to rehabilitate Dr. Foster's reputation for veracity. However, nothing will change the fact that Dr. Foster and the White House consistently provided the Senate with false information. I cannot in good conscience support such a nominee.

Moreover, I have begun to think that we no longer need a Surgeon General. Many of the responsibilities of this Office could easily be fulfilled by others in the Department of Health and Human Services. Savings from elimination of the Surgeon General's Office could be contributed toward deficit reduction. With the total mishandling of the Foster nomination, President Clinton has demonstrated better than any of his predecessors the irrelevancy of the Office of Surgeon General.

Mr. KEMPTHORNE. Mr. President, I rise today to speak on the nomination of Dr. Henry Foster as surgeon general of the United States.

Let me begin by stating that I am unequivocally opposed to confirming Dr. Foster for this post.

I have been concerned about this nomination from the time it was announced. We are all well aware of the conflicting reports which came out of the White House about Dr. Foster's background. I do not think I need to go into the confusion created by the continually changing reports about the number of abortions which the doctor has performed. But those inconsistencies quickly cast a shadow over the nomination as to whether the administration had done its job of properly investigating a potential nominee.

While I do not believe Dr. Foster should be held responsible for the blunderings of the White House staff, the situation raised doubts about his forthrightness which have, in my mind, never been resolved.

One of the most glaring examples of this lack of candidness involved the Tuskegee Syphilis Study, in which black men with the disease went untreated as part of a study to examine the long-term effects of syphilis. While Dr. Foster claims he had no knowledge of the study prior to 1972, Public Health Service records indicate the Macon County Medical Society, of which Dr. Foster was vice-president,



and later president, knew of the study as early as 1969.

We have received conflicting reports about whether or not Dr. Foster attended the meeting in which the society agreed to cooperate with the PHS in the study. Even if he did not attend, documents from PHS officials indicate further efforts were made to share information on the study with all the members of the Macon County Medical Society. I simply do not see how Dr. Foster, as the vice-president of a 10-member society, could have completely avoided any knowledge of this study while so many efforts were being made to keep the society fully informed on this matter.

But let us not focus entirely on the past. What about the future? What kind of role would Dr. Foster play as surgeon general? He has stressed his concern about the rate of teenage pregnancy in this country. Surely, this is a concern which all of us share. Illegitimacy, especially among teens, is at a crisis level in the United States. Equally important, however, is the manner in which this issue would be addressed if Dr. Foster were confirmed.

The basis of Dr. Foster's efforts to reduce teen pregnancy may be seen in the "I Have a Future" program. From my knowledge of the program, it leans toward the attitude that, "Kids will be kids." It assumes that when it comes to sex, we must teach children to be careful rather than responsible. I could not possibly disagree more with this view. Yes, children must be allowed to make some decisions for themselves. But we, as adults and parents, have a responsibility to instill strong values in today's youth.

Dr. Foster's "I Have a Future" program failed to provide such guidance. Teaching young people about sex, without stressing the importance of abstinence, at best, gives young people an incomplete message. At worst, it actually encourages the kind of behavior which we should be trying to discourage.

Mr. President, we are all well aware of the controversy which has surrounded the Office of the Surgeon General in recent years. The next surgeon general must be able to repair the damage which has been done to that position. The focus must be shifted from the personality of the office holder to the important health issues which face our Nation.

While I would not question Dr. Foster's level of concern about the issues he embraces, I do not believe he would be able to achieve this goal. For this reason, I will oppose Dr. Foster's nomination.

The PRESIDING OFFICER. Who yields time?

The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 14 minutes and 10 seconds.

Mrs. KASSEBAUM. And how much on the other side?

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes 17 seconds.

Mrs. KASSEBAUM. Mr. President, I would like to yield myself 3 minutes.

As we close the debate today on the nomination of Dr. Foster, I would like to make just a few further comments about the process.

I think it has been a good debate the last 2 days. Prior to that time, the Labor and Human Resources Committee spent a considerable amount of time focusing on the substantive issues and raising substantive questions regarding this nomination.

Some, including a majority of the committee, were satisfied with the answers that Dr. Foster gave, and the vote was 9 to 7 to report him favorably from committee. Others, including myself, were not.

With respect to the process in the Chamber, the majority leader had a number of options, including the option of not bringing up the nomination of Dr. Foster at all. I have always believed we should have an up-or-down vote on nominations. Nevertheless, the course that was chosen by the majority leader is one that is a perfectly legitimate option, well within the rules of the Senate. These are rules that have been used frequently in the past by Members on both sides of the aisle—as has been pointed out in the course of this debate.

The majority leader has made this debate and these votes possible in less than 1 month after the nomination was reported from the committee.

There is nothing that would have made this process pleasant for any of us, most of all Dr. Foster. We may regret how we handle confirmation processes and nominations for members of a President's Cabinet and agency heads. It is not an easy process, and it has become, I think, increasingly a grueling one.

In this case, I believe it has been handled in a way which is well within the parameters of appropriate conduct. There are those who have questioned that, but I think there has been an opportunity to air strong feelings on both sides in ways that have fit the rules and the procedures of the Senate. I am not sure, Mr. President, that we can ask for more than that. It has been my own belief that Dr. Foster has answered successfully and well the questions that were put before him in the committee.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. KASSEBAUM. I will yield myself 1 more minute.

And those were important and substantive questions. For myself, I do not believe he is the person to be a successful Surgeon General of the United States at this time and that is why I have opposed his confirmation. Nevertheless, I feel strongly that the nomination has been debated and handled fairly within the scope of legitimate procedures of the Senate.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 2 minutes.

Mr. JEFFORDS. Mr. President, I rise in strong support of cloture, as I believe it is the right of the President to have an opportunity to have a vote up or down on a very fine man who is willing to dedicate his time to public service, who has an unblemished career of dedication to those people who need help, those who are economically disadvantaged, and those who have not seen the advantages that have been brought to so many others.

It is unfortunate that we find ourselves in this situation because there is no question that this man was picked because he would not "Raise the specter of abortion," because his record, first of all, of being an ob/gyn doctor who only performed 39, 40, if you want to count another, abortions in 38 years is certainly not of one who is out seeking to make a career of abortions, by any stretch of the imagination.

In addition to that, by serving the poor and starting his program I Have a Future, he set an example we must replicate around this country of how we can get the young people in our schools to look towards the future with hope, to understand that teenage pregnancy is a bad situation and that he had all those kinds of rules that he followed in respect to that, teaching abstinence, of teaching parental guidance when possible, things that I do not think anyone disagrees with. It is true that the study was marred by utilization of statistics, but that does not in any way diminish the importance of the message he was giving to those young people.

Mr. President, I want to remind my colleagues what this vote is about. We are here to consider whether or not we will limit debate on this nomination, whether we not allow a minority of this Chamber to take this nominee hostage.

We are going to vote now, not on whether Dr. Henry Foster is qualified for the job of Surgeon General—which I believe he is—but on whether we will allow the President's nominee the courtesy, the due process, of an up or down vote on his nomination.

What reason could we possibly have not to vote? Whose interests are served by allowing a minority of Senators to deny a presidential nominee a confirmation vote?

The charges against Dr. Foster that we heard yesterday and today are just that—charges. They are allegations, not fact. During the committee process I spent hours and hours familiarizing myself with Dr. Foster's record and the specifics of his critics' charges. I became convinced of several facts:

Henry Foster did not learn of the Tuskegee experiments in 1969 at the

briefing given by public health officials. Not only is he documented as attending at a complicated Caesarean section birth shortly after the meeting started, but I believe the doctors who were at that meeting were not given the full story. Foster did not know anything about the denial of treatment for these men.

In fact, no one did, because even the doctors at the meeting were not told about it. According to the FBI, the public health officials were already covering their tracks and when they briefed these six or eight doctors they did not tell them the truth about the experiment. How could they have?

Certainly someone given the facts would have spoken out publicly and halted the 40-year-long project.

Foster did not know because nobody knew. Decades later, we cannot prove the content of the meeting because the minutes, trip report and file have long ago disappeared from the CDC archives as the officials tried to cover their tracks.

Dr. Foster has had a distinguished medical career, treating patients within the medical norms of his time and even advancing new and better treatments in many cases. I hope my colleagues will resist the temptation to judge treatments given decades ago—like the sterilizations of severely mentally impaired women—by the medicine of today.

Then as well as now, Dr. Foster has enjoyed the admiration and acclamation of his peers, and he has been supported in this nomination by every medical group that I can think of, ranging from the AMA, not known for its liberalism, to the American College of OB/GYNs to the American Association of Medical Colleges.

It is undeniably true that the administration did not serve Henry Foster's nomination well in its characterization of his record on abortion. Ever since they misinformed Senator KASSEBAUM's office about the number of procedures he had performed back in January, there has been confusion in the numbers game.

But after he had the opportunity to review his patients' medical records, Dr. Foster gave us a number; he is the physician of record for 39 surgical procedures since 1973. That number has not changed.

I can understand why he did not know off the top of his head, because I would be hard pressed to give an accurate count of the votes I have taken on a particular issue over the past 20 years. I might volunteer an estimate, but I would certainly have to do research to verify the number.

Some have implied that we should not vote on Henry Foster's nomination because he was once—once in a 30-year career—charged with medical malpractice. The charges were dropped. The case was not adjudicated. Yes, the allegation of improper conduct was made, but it was not substantiated.

I would suggest to my colleagues that we have a similar situation here

and now with this nomination. There is no substance to the charges against this good man, this talented and hard-working doctor.

Let us not let ideology and politics get in the way of fairness. We have a collective responsibility to vote, even on controversial nominees. I do hope my colleagues will join me in supporting Dr. Foster's nomination, but at the very least I believe he deserves an up or down vote. Let us not deny him that. Please join me in voting for cloture.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time? The Senator from Massachusetts.

Mr. KENNEDY. I yield 2 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 2 minutes.

Mr. DODD. Mr. President, I thank the distinguished Senator from Massachusetts.

Mr. President, I spoke yesterday on this nomination, but I wish to emphasize again today my strong support for this nominee and my strong hope that this very fine American will be given a chance to be voted on, yes or no. I think it is regrettable that there are those who cast their votes against this man, who never even bothered to talk to him, never met him, did not participate in the hearings. I would invite my colleagues in the short time that remains to talk to their colleague from Tennessee, Dr. Frist. The rest of us talk about Dr. Foster. Although some of us met him and spent time with him, it has been just since February. Dr. Frist, our new colleague from Tennessee, has not only known him but worked with him. I would invite my colleagues to read his comments in the Senate Labor Committee hearings, just prior to the favorable vote coming out of that committee.

Some of us talk at least from some experience, having spent some time with him, but here is someone who actually worked with him, knows him from his State, knows people he has worked with. You can listen to speeches by those who oppose him, never met him, never sat down with him, in fact in some cases within hours after his name was sent up announced they were against him. That is almost unheard of. I respect those who let the hearing process go forward, gave him a chance to express his views, listened to him, and then said they were against him. But to never meet the man, never give him the benefit of a hearing, even a personal one, and then decide that he did not deserve to be voted on by this body, I think is a sad moment in this Chamber.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. KENNEDY. I yield 1 minute to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 1 minute.

Mrs. MURRAY. I thank the chair. I thank my colleague.

I want to thank Senator KASSEBAUM for having conducted fair hearings and allowing the process to move forward. I hope that today's vote is one again of fairness.

A filibuster on nominations has only occurred 24 times. Twenty-two of those times in this body, the body has said the nomination deserves an up-or-down vote; two of those other times they were nominations made by Democratic Presidents and defeated by Republican filibusters.

I hope that fairness prevails as it has 22 times in the past and that this Senate votes today to allow this nomination to come forward so we can finally vote up or down on the nomination of Dr. Henry Foster. He deserves that vote, and he deserves our confidence.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. Mr. President, no matter how they have tried to distort and misrepresent the record of Dr. Foster, he is an outstanding physician, selected by the Institute of Medicine, selected to be on the governing board of the most prestigious board in the United States of America for a doctor, outstandingly well qualified.

On the one hand you have the sense of hope, the belief in the young people of this country, someone that really wants to give something back to this country for all that it has done for him. And on the other side you have gross distortions, misrepresentations, and negativism. That is what we have seen during the course of this debate. And the opposition is basically as a result of Presidential politics.

I say again, let us leave Presidential politics in Iowa and in the other primaries, and let us get on and give this outstanding individual the fair vote that he deserves.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Kansas controls 10 minutes 20 seconds.

The Democratic leader is recognized.

Mr. DASCHLE. I understand the time allocated to this side has been expired. So, I will use my leader time to accommodate that.

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

Mr. DASCHLE. Mr. President, this is an important moment. The vote we are about to cast will affect more than one man or one position. It will help dictate the way this Senate discharges one of its most important duties. And I ask each of my colleagues to think about that as we cast our vote. Each of us has been afforded the right to make our case to the American public. That is how we got here. We cannot deny this afternoon the same right to a man who is clearly qualified to be the next Surgeon General.

The Surgeon General has been rightly called America's family doctor. And in that capacity he or she is called upon to grapple with some of the most

difficult problems of our day; problems like AIDS, problems like teen pregnancy, problems like substance abuse and breast cancer, problems that are devastating to the American people and to families all over this country.

This Senate has talked too little about these problems during the course of the last 5 hours. Instead of focusing on America's future, many Members of this Senate have chosen to focus on the past and, frankly, distorting it. That is regrettable. The distinguished majority leader said yesterday that this is not such an unusual occurrence. Twenty-six times in the last 27 years, he said, nominees have been denied confirmation by filibuster.

Well, just moments ago I heard the distinguished Senator from Iowa set the record straight on that issue. Senator HARKIN—as others have indicated on several occasions already during this debate—has attempted to correct the record on this and so many other matters that have been misrepresented or on which only half the facts were presented. The fact is that on every occasion during the 27 years Senator DOLE cited, when it was a Republican nominee, that nominee ultimately was approved with bipartisan support. Two nominees were prevented from being confirmed by a filibuster, and both were Democrats—Abe Fortas, who was nominated by President Johnson to sit on the Supreme Court, and Sam Brown, who was nominated by President Clinton for the rank of Ambassador. So the only filibusters that have prevented nominees from receiving a fair vote were Republican filibusters. Let us be clear about that.

So the question before us today is not whether Henry Foster is qualified to be Surgeon General. That is the question we will face should we take the next step forward. Mr. President, the question we face this afternoon with this vote before us now is one of fairness. And the American people have made themselves abundantly clear on the question of fairness. The majority of people have said in poll after poll, Henry Foster deserves a vote. And the majority of this body agrees with that sentiment.

Are we going to confront the health problems that are devastating America's families and give Dr. Foster the opportunity to combat those problems as Surgeon General? Will we do that? Or are we going to allow partisan Presidential politics to stifle that debate?

The question we face right here, right now, is simply that. It is a question of fairness. What message are we sending to Dr. Foster, to the American people who believed in his right to a fair vote? What message are we sending to the people who look up to Dr. Foster as a role model and to all the Americans who need the services of a qualified Surgeon General today if we refuse to extend to Dr. Foster the opportunity given every one of his predecessors? Mr. President, the issue this afternoon is simply one of fairness.

What is really being judged here, unfortunately, is not Dr. Henry Foster. For 6 months, Dr. Foster has been subjected to intense scrutiny from the Labor Committee, from the media, and from the American people. And he has passed every test. The only test he did not pass was the litmus test of the far right. What is being judged here is the Senate itself and the way the Senate deals with those who come before us to offer their public service.

Henry Foster is an extraordinary physician and leader. If this were not an election cycle, I have no doubt that he would be Surgeon General already, that this Senate would have confirmed him overwhelmingly long ago. Henry Foster is a selfless man who wants to serve his country and is being wasted for the selfish political ambitions of a few. If we prevent him from receiving a fair vote, we will make it even more difficult to attract good, qualified people to public service. And this body, the U.S. Senate, will be judged harshly.

Mr. President, I close with this thought: It is the position of this Senator that the process we have just seen is clearly wrong. It is wrong for the United States and it must be stopped. The business of interest groups fanning out through the country, digging up dirt on a nominee, the business of leaks, of confidential documents put out to members of the press, the idea that absolutely anything goes that is necessary to stop a nominee, this whole process must end. We in the Senate have the power to encourage that process or the power to stop it. We have that power by the vote we are about to cast.

Mr. President, those are not my words. They belong to a former colleague, Senator John Danforth. Senator Danforth issued that eloquent plea nearly 4 years ago in the defense of Clarence Thomas' right to a vote on his nomination to sit on the Supreme Court. Justice Thomas received that vote. He received that vote with the backing of some of the very same people who now would deny that vote to Dr. Foster. And I urge Members, in particular today on this nomination, to put politics aside just for the moment and allow Dr. Foster's nomination to move forward. It is a question of fairness, Mr. President. And the answer—well, the answer is in our hands.

I yield the floor.

The majority controls 10 minutes.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. As I said yesterday, I would like to begin with just a few facts, facts we sometimes are not using in debate or are not reported by the media. Let me again say, because I did not read it anywhere and did not hear it on television—maybe it was on radio: During these 2½ years in office, President Clinton has submitted 251 names to the Senate for confirmation of civilian positions. Of these 251, 115 have been confirmed, 1 withdrawn and none defeated. The rest are in the confirmation pipeline.

Let us get the record clear right up front. You talk about fairness. That is 251, and not one defeated. And, second, I heard about a filibuster. I do not know of any filibuster going on. If so, I missed it. By unanimous consent we agreed to this procedure. I think it is a good one. We are giving Dr. Foster the same thing we gave Chief Justice Rehnquist back in 1986 when I had to file cloture because the Senator from Massachusetts would not let it come to a vote.

So Dr. Foster's nomination was reported out of the Labor Committee on May 26. We began this debate on June 21, and during that period there has been a 7- or 8-day recess. So Dr. Foster has been treated fairly. The Labor Committee has acted promptly and his nomination has been placed before the full Senate for debate and a vote.

Again, as I said yesterday, I have always felt that the President should have a right to his nominees, but there may be exceptions from time to time, and I have voted against nominees from time to time—not very often. I believe the record will show that we have cooperated in nearly every case; in fact, even helped the President with some of the nominations which might have been in trouble without assistance from this side of the aisle.

There is plenty of precedent for rejecting a nomination on a cloture vote. Again, as I said, I will put in the RECORD for everyone to see that there were 24 nominations, including the nomination of William Rehnquist to be Chief Justice, which had to face cloture vote hurdles.

So overnight, I have done a little research on the Rehnquist nomination, and I learned that 19 of my Democratic colleagues who are still in the Senate today voted against invoking cloture on this nomination: Senators BAUCUS, BIDEN, BRADLEY, BYRD, DODD, EXON, GLENN, HARKIN, INOUE, JOHNSTON, KENNEDY, KERRY, LAUTENBERG, LEVIN, MOYNIHAN, PRYOR, ROCKEFELLER, SARBANES, and SIMON, and also then Senator ALBERT GORE. Now, certainly, he would not be unfair, but he was, according to all the rhetoric I heard coming from the other side.

In fact, I filed a cloture motion on the Rehnquist nomination because my colleague from Massachusetts, Senator KENNEDY, was apparently unwilling to end debate. Do not take my word for it, just take a look at page 23336 of the CONGRESSIONAL RECORD for September 15, 1986. Senator KENNEDY also urged his colleagues to follow the Abe Fortas example: Defeat cloture so the Rehnquist nomination will be withdrawn. That can be found on page 22805 of the CONGRESSIONAL RECORD of September 11, 1986.

So, Mr. President, we hear a lot of talk about fairness, we hear a lot of talk about the need for an up-or-down vote, but I do not remember all the hand wringing about fairness back in

1986, or many times since that time, when at that time the Chief Justice Rehnquist nomination was on the line.

What does history tell us? History tells us that 31 of my colleagues on the other side of the aisle were prepared to filibuster a nominee to one of the highest positions of our Government, and today many of those who supported this filibuster allege unfairness when Republicans exercise the same right—the same right—only this is a minor office compared to the Chief Justice of the Supreme Court.

We are talking about a nominee to an office with a budget of under \$1 million with a staff of six. But he is supposed to make certain everybody is taken care of, all the medical problems are going to be taken care of if we just vote yes on this nomination, according to my distinguished colleague from South Dakota, Senator DASCHLE.

In fact, I remember my colleague from Massachusetts arguing against the Justice Rehnquist confirmation because he “lacked candor in testifying before the Senate Judiciary Committee” and because of Justice Rehnquist’s “alleged pattern of explanations \* \* \* that are contradicted by others or are misleading or do not ring true.”

Does that sound familiar? Many of us said this time the same thing about Dr. Foster.

I have talked to him personally, others have talked to him, others who are on the committee. We should not have the right to make that judgment because we are Republicans, but it is all right to make it against the Chief Justice nominee for the U.S. Supreme Court.

So, Mr. President, facts can be stubborn things. They are rarely noted by the media, not often used in this Chamber. But they show that we have a double standard and it is alive and well in Washington, DC. And it goes on and on and on. We hear all the hand wringing over there and all the talk of Presidential politics on this side and nothing about Presidential politics downtown. This is not about Presidential politics. That may be a good sound bite. This is about Dr. Foster and his qualifications for the office, and it is about our right to advise and consent.

I must say, as I look back on it, we could have chosen other options, but it seemed to me this was a fair option, just as fair as it was for Justice Rehnquist who was nominated to be Chief Justice.

Cloture was invoked in that case. Cloture can be invoked in this case. The issue is not whether cloture was invoked on 22 of the 24 nominations that have been subjected to cloture procedure. This is a false distinction. What is important is we have had 24 nominations subjected to a cloture vote. So he can get an up-or-down vote, all he needs to do is get 60 votes on this, as others have done in the past.

I do not question those who say Dr. Foster is probably a fine person. I do

not know Dr. Foster that well. I have had one visit with him. I do not snoop around about his past. I think Senator DANFORTH was right when he made that statement: Tell it to the family of John Tower when you talk about allegations and stuff over the transom, under the transom and wrecking somebody’s character; tell it to John Tower’s family. He is gone.

Tell it to Robert Bork. Tell it to his wife when they were harangued and harassed day after day after day by the Judiciary Committee.

Tell it to Bill Lucas and his family, the fine outstanding sheriff of Wayne County, MI, an outstanding black American who did not even get a vote, any kind of a vote on this floor, because the Judiciary Committee voted, in a 7-7 tie, and would not report him out.

That is the thing the Democrats do not tell us: How many Republicans never had a hearing, were never reported out of the committee, and when they were reported out, they stayed on the calendar; never had the courtesy to even have a cloture vote. They died on the calendar.

I have not heard anybody say anything about that over there, and I put those facts in the RECORD. I thought surely somebody would get up and explain why the Democrats would do that when they talk about fairness and their hearts ache and they cannot sleep at night. Why do they not read the RECORD and go back and call all the families of the people who did not even get a hearing or were on the calendar week after week after week, month after month after month and never even had the courtesy of a vote, not even a cloture vote.

So I know all about it. I have been here a while, and I keep track of these things. What comes around goes around, and none of us are perfect. When we make arguments on the Senate floor, we ought to go back and look at the last argument we made and the one before that to see if it is consistent and how did we vote on Rehnquist before standing up to make a speech.

I can recall in 1980 joining with the Senator from Massachusetts, Senator KENNEDY, when they wanted to block John Breyer’s nomination. I said it should not be blocked, and I voted for cloture, and we succeeded. He was a Democrat, so it is not politics.

This nomination was flawed from the start, and the President knows it. But he sought to divide the American people on the issue of abortion. That is all this nomination is about, trying to divide the American people for political purposes, and the President talks about politics and his Chief of Staff Leon Panetta goes on television this morning in some outrageous statement about a vengeance up here—vengeance—which means they must be losing.

So I wish Dr. Foster well. No one likes to see someone who may want to have a job denied that opportunity. I

met with a lot of the families who did not even get a vote of any kind because they were Republicans in a Democratic Senate. Well, Dr. Foster is getting a vote. I promised him that, and he is getting it very quickly, in 2 days.

I met with him on Monday, and here it is Thursday, and we are going to have the second vote. I think his initial lack of candor and certainly lack of truthfulness on the part of the White House made this nomination in doubt from the start.

So whether it is his misleading statements concerning his abortion record, or his alleged knowledge of the infamous Tuskegee syphilis study or involvement in sterilizing several mentally retarded women, there are just too many questions. If the Senator from Massachusetts can say that somebody lacks candor, maybe we can say it with the same credibility on this side of the aisle. Maybe we are not entitled to that because we are Republicans, only the liberals are entitled to make those judgments. But we are, too.

As I said yesterday, we need somebody in that position to be America’s doctor—not Republicans, not pro-life, not pro-choice, not Democrats, not conservatives, not liberals, but America’s doctors. It is not a policy position, it is a public relations job, with a staff of six. The world will not come to an end if we do not ever fill this office or if it is abolished.

So it seems to me we do not want somebody to divide us, as the previous Surgeon General did, about legalization of drugs and all the other statements made by that Surgeon General, but that has nothing to do with this nomination. My point is, if there is somebody out there, there are thousands and thousands of good people out there who can unite America, unite Americans, whatever they can do in that office, and this is not the right nomination.

Again, I agree with Senator DANFORTH. I wonder sometimes why anybody would accept a nomination, but I do not know anybody on this side who has been personal about Dr. Foster. I am proud of the fact he is a veteran. As far as I can see, he is a good person. We had a nice visit. But also we have to have a record, and the record, I think, is the problem: His lack of candor.

So we are proceeding, I think, in a very fair way, as we look at history and look at the record and look at how quickly this nomination has moved.

It seems to me cloture should not be invoked and this nomination would go back on the calendar, as the unanimous-consent agreement indicates.

#### CLOTURE MOTION

The PRESIDING OFFICER (Mr. THOMPSON). The hour of 2 p.m. having arrived, under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows: