

rules of the Senate. It is a right to the minority. We have used it. If the Senator wants to do that, he has the opportunity to do that, but it inconveniences everybody else, and if you think it is going to change the result, maybe it is worth it, but if it is just to be obstinate or intransigent because you didn't win or your point of view isn't accepted by your fellow colleagues, it puts everybody else at a disadvantage. To imply the majority leader—

Mr. WELLSTONE. Will the Senator yield?

Mr. COATS. Or the Republicans have somehow conspired to deny the Senator from Massachusetts the right to make his point or to argue his point, my goodness, we have been hearing that over and over and over and over. We know what the Senator's position is. He has the right to argue it, and he has the right to delay it. Let's make sure it is not implied somehow there is some devious effort on the part of the Republicans to deny the Senator his opportunities.

Mr. WELLSTONE. Will the Senator yield?

Mr. LOTT addressed the Chair.

Mr. WELLSTONE. If the Senator will yield.

Mr. LOTT. If you will allow me to respond to some of the things the Senator from Massachusetts said. He asked for 1 minute to wrap up, and I need to respond, and then I will be glad to yield.

With regard to the amendment before us, it was offered at 5:05. An offer was made to limit the time on that to 30 minutes. I believe the managers of the bill were very content with that. An offer was made to limit speeches to 5 minutes on this issue. There was no desire to drag it out. So, again, to imply that we have been prolonging this is just not accurate.

Now, with regard to the Food and Drug Administration effort to make the bureaucratic FDA more responsive to the needs of the American people, this really affects quality of life and health care, and I know the Senator from Massachusetts cares a great deal about that. This is one way we can help them to get medical devices and pharmaceutical products available to the American people. The vote in the committee was 14 to 4. Usually when you have a vote in the committee and it is overwhelming in a bipartisan way, you bring it to the floor and you have debate, amendments, vote, and move on.

But somehow or other, I mean, some folks seem to think when you have a vote in a committee and lose, then the negotiations begin. The leader of both parties always has to be sensitive to that. I have allowed Senators on both sides of the aisle to continue negotiations on the foster care bill, on other bills, but I have been very patient on this. And I wanted a cloture vote on this back in July. I was told repeatedly, "Oh, we're about to get it agreed to, about to get it done." Every time we were about to get it done, the Sen-

ator from Massachusetts said, "Oh, no, there's something else here I want."

I think the Senator from Vermont has been doing the very best he can in the negotiations. I personally think he has negotiated too dang much. The vote in the committee was 14-4. Why are we negotiating on all this stuff? Let us bring it to the floor and let us vote.

So when I get this magnanimous offer: Oh, you can have a cloture vote next week, put it off another—I offered a UC that would have given the Senator from Massachusetts an opportunity to negotiate Friday, Monday, all day Tuesday, and go on the bill on Tuesday night. He said no. But if we wait until next Tuesday to have a cloture vote on the motion to proceed, then he may try to force us to have a vote on going to the bill itself later on on a cloture vote, and then we might someday, in another week or so, get to FDA. That is ridiculous. There has been enough time.

The Senate wants to vote on this issue, overwhelmingly, in a bipartisan way. The committee has spoken. On a cloture vote, on a motion to proceed, the requisite number of Senators will vote for cloture, I believe. So I mean, that is not very responsive. It is time we get to this issue. Make your case, offer your amendments.

On the cosmetic thing, I mean, the Senator from Massachusetts is defending and worrying about States rights. Boy, getting some role reversals around here, when he doesn't want us to even get an amendment and vote on it. He may have the merits on his side. If he does, let us hear them; we will vote.

But, you know, it is time that we move forward on Labor-HHS. It is time we vote on the merits of FDA reform. I cannot believe we want to further delay. Every day we delay on FDA reform, there is some other delay by the bureaucracy at that agency that denies the people of this country medical devices and pharmaceuticals that help them with their lives and lifestyles. And so we are not going to delay it any longer. We are going to get an agreement to go to the bill on Tuesday or we are going to have a cloture vote in the morning. And if the vote doesn't succeed, we will have another one. I think I have been more than reasonable, and so has everybody else.

#### UNANIMOUS-CONSENT REQUEST

Mr. LOTT. Mr. President, I ask unanimous consent that the following be the only amendments remaining in order to the Labor-HHS appropriations bill, other than the pending amendments, and they be subject to relevant second-degree amendments, and that all first-degree amendments must be offered prior to the close of business on Monday, September 8, other than the amendments designated as managers' amendments.

I further ask unanimous consent that following the disposition of the amend-

ments, the bill be advanced to third reading, and a vote occur on passage of S. 1061, and the bill remain at the desk. I further ask unanimous consent that once the Senate receives the House companion bill, the Senate proceed to its immediate consideration, and all after the enacting clause be stricken, the text of S. 1061 be inserted, the House bill be advanced to third reading, and passed, all without further action or debate.

I further ask unanimous consent that the Senate insist on its amendment, request a conference with the House on the disagreeing votes, and the Chair be authorized to appoint conferees.

I further state for the membership that any votes ordered with respect to the Labor-HHS bill on Friday and Monday, September 8, be postponed to occur at 5 p.m. on Monday, with one vote at that time, on a case-by-case basis. Thereafter, we will begin votes on Tuesday morning at 9:30.

I further ask unanimous consent the Senate proceed to S. 830 following the passage of the Labor-HHS appropriations bill—that is the Food and Drug Administration reform bill—but not earlier than 4 p.m. on Tuesday, September 9, to give the Senate plenty of time to continue to work on any agreements that they could come together on, and the cloture vote scheduled for Friday be vitiated.

That is the unanimous-consent request that I think is fair for all concerned. I urge that it be accepted.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Reserving the right to object, Mr. President, I want to just point out that the person that sets the schedule is the majority leader. If the majority leader files the cloture motion on a Wednesday, we end up having the cloture vote on a Friday. That is what the majority leader has done. It was his decision. He has every right to. And that is what we have as the regular order that is before the Senate.

But effectively what the majority leader now is doing is asking a consent to vitiate what the regular order would be in terms of the cloture motion. I do not question that we are short on the votes and that there will be an overwhelming vote in favor of moving toward the bill. But the regular order is, as filed by the majority leader on Wednesday, for a cloture vote on Friday. He knew what he was doing. He knew what he was doing.

He was the one that set the vote for Friday. And so I find it somewhat difficult to accept easily the fact that somehow the burden ought to be on other Members because the Senator now does not want to move ahead and have the vote on Friday. He was the one that established that process and procedure and set in motion those procedures. And for the reasons that I have outlined earlier with regard to

particularly the preemption with regard to the cosmetics, and the protection of the consumers on those issues, which I think is a travesty in protecting the American families, and primarily the American women, I am going to object to the elimination and vitiation of the cloture motion.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. In view of what I just heard the Senator say—he is right, that is the regular order. Of course, it is common practice, if you work things out you vitiate the necessity for a cloture vote. But, yes, I knew exactly what I was doing. And what I was doing was trying to carry out the will of the Senate, and not allow one Senator to any further delay the discussion of the merits of FDA reform.

In view of what the Senator said, I revise my unanimous-consent request to comply with what I thought I heard the Senator saying, the same unanimous-consent request all the way down the line, except that we would have the cloture vote in the morning at 9:45.

Would there be objection to that?

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I personally do not believe I would object to it, I say to the Senator. I do not know whether the amendments that have been included—I have not seen the list. I have had some amendments.

Mr. LOTT. It has been cleared—

Mr. KENNEDY. I have been given assurance by the staff—Mr. President, I object temporarily until I have a chance to talk to the minority leader.

The PRESIDING OFFICER. Objection is heard.

Mr. KENNEDY. I object until I have a chance to talk to him.

Mr. LOTT. In an effort to try to get a reasonable agreement worked out here—I believe our list has been cleared on both sides. I think the Senator from Iowa has had a chance to review it. In the interest of trying to get something worked out here, I would be prepared to take a 5-minute quorum call so we can look over the list and discuss it. If we cannot get that worked out, then I would begin the process of taking up the two judges and voting here in a few minutes.

So in view of the Senator's comments, and the idea that maybe we could get an agreement, I would at this point—

Mr. LEAHY. Will the Senator yield for a question?

Mr. LOTT. Yes. By the way, this unanimous-consent request was worked out over a period of hours. I think it has been cleared on both sides by all Senators with the exception of one. Senator DASCHLE was intimately involved in it. And some of the things in the UC were at his request, including that we only have one vote at 5 o'clock on Monday. So, I mean, everybody cleared it except Senator KENNEDY.

Mr. FORD. Would the majority leader yield?

Mr. LOTT. I would be glad to.

Mr. FORD. Is there any doubt that we will have two votes as it relates to judges following whatever occurs on your unanimous consent request? I think that we need to alert your side and ours.

Mr. LOTT. That was not in the UC.

Mr. FORD. You mentioned you were going to have one.

Mr. LOTT. That is my intent. If we do not have any cooperation on other matters, we would vote.

Mr. LEAHY. If the leader would yield for a question.

Mr. LOTT. Yes.

Mr. LEAHY. Might, while you are trying to work this out, have one of those votes on the judges? We have to do them at some point anyway. Go ahead and do it.

Mr. LOTT. Mr. President, so that everybody will know we are on the verge of having a vote, I think it is in the interest of all of us to take 5 minutes, look at the list, and everybody could be called to notify them we are fixing to begin voting. And if the Senator was not here, we plan to vote on two judges tonight, and hope to get two more perhaps Monday or so.

Mr. FORD. There will be a rollcall vote on this?

Mr. LOTT. I have been requested to get rollcall votes.

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

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

Mr. LOTT. While both sides continue to check the amendment list and see if we can get an agreement on the UC, let's start our first recorded vote, that will be out of the way, and perhaps we can get a final agreement.

Mr. FORD. If the majority leader will yield, it is my hope that everyone has been notified that we are going to vote. I hope we would not start until such time as we feel like both sides have been notified.

This side is all right.

#### EXECUTIVE SESSION

#### UNANIMOUS-CONSENT AGREEMENT—NOMINATIONS OF HENRY HAROLD KENNEDY, JR., AND FRANK M. HULL

Mr. LOTT. As in executive session, I ask unanimous consent the Senate proceed to executive session to consider the following nominations on the Executive Calendar, and further the Senate proceed to an immediate vote on each nomination consecutively. I further ask unanimous consent that following the series of votes, and it is two votes on the nominations, the President be

immediately notified of the Senate's action and the Senate then proceed to return to legislative session.

The executive nominations at this time are as follows: Calendar No. 164, Henry Harold Kennedy, Jr., of the District of Columbia, to be U.S. District Judge for the District of Columbia, and Calendar No. 233, Frank M. Hull, of Georgia, to be U.S. Circuit Judge for the Eleventh Circuit.

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

Mr. LOTT. I further ask unanimous consent it now be in order to ask for the yeas and nays on each of these nominations with one show of hands.

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

Mr. LOTT. I now ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there sufficient second? There is a sufficient second.

The yeas and nays were ordered.

#### NOMINATION OF HENRY HAROLD KENNEDY, JR., OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Henry Harold Kennedy, Jr., to be a U.S. District Judge for the District of Columbia? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska [Mr. MURKOWSKI], the Senator from North Carolina [Mr. HELMS], and the Senator from Rhode Island [Mr. CHAFEE] are necessarily absent.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN] is necessarily absent.

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 218 Ex.]

#### YEAS—96

Abraham	Dorgan	Kyl
Akaka	Durbin	Landrieu
Allard	Enzi	Lautenberg
Ashcroft	Faircloth	Leahy
Baucus	Feingold	Levin
Bennett	Feinstein	Lieberman
Biden	Ford	Lott
Bingaman	Frist	Lugar
Bond	Gorton	Mack
Boxer	Graham	McCain
Breaux	Gramm	McConnell
Brownback	Grams	Mikulski
Bryan	Grassley	Moseley-Braun
Bumpers	Gregg	Moynihan
Burns	Hagel	Murray
Byrd	Harkin	Nickles
Campbell	Hatch	Reed
Cleland	Hollings	Reid
Coats	Hutchinson	Robb
Cochran	Hutchison	Roberts
Collins	Inhofe	Rockefeller
Conrad	Inouye	Roth
Coverdell	Jeffords	Santorum
Craig	Johnson	Sarbanes
D'Amato	Kempthorne	Sessions
Daschle	Kennedy	Shelby
DeWine	Kerrey	Smith (NH)
Dodd	Kerry	Smith (OR)
Domenici	Kohl	Snowe