have a strong leader with the power vested in him by Presidential nomination and Senate confirmation.

So I urge my colleagues to accept the President's nominee, Dr. Lester Crawford, and to vote to confirm him as the next Commissioner of Food and Drugs.

Mr. KENNEDY. Will the Senator yield another minute? Am I right, we have until a quarter of?

The PRESIDING OFFICER. The Senator from Wyoming has a minute 20 seconds remaining, the Senator from Massachusetts has 2 minutes 40 seconds.

Mr. KENNEDY. May I ask the Senator for a minute?

Mr. ENZI. Yes.

Mr. KENNEDY. Seeing who is in the chair, does the Senator not agree with me that one of the additional important responsibilities of the FDA is going to be bioterrorism? We are going to need a Commissioner at the FDA to lead this important work to prepare us against a bioterrorist attack. That is going to be enormously important. The HELP Committee has had our recent briefings on this issue, and bioterrorism is certainly an important area on which we will need the leadership of the FDA. I know the Senator from Wyoming is concerned about this bioterrorism, and the BioShield legislation, to make sure we have the vaccines and other medical products on line to respond to the dangers of bioterrorism. Bioterrorism is a pressing area in which we are going to have to work, and we need a leader at FDA to help us.

Mr. ENZI. The Senator is absolutely correct. The Presiding Officer is chairing that subcommittee and holding extensive hearings on that and bringing together some great experts to help us resolve that.

Mr. HATCH. Will the Senator yield also for just a moment? We introduced the bioshield II, the Lieberman-Hatch bill that has gone a long way to resolving this matter, and I intend to work with the Senator from North Carolina and the distinguished chairman and ranking member to see if we can bring this to a conclusion that works.

I thank the chairman.

Mr. ENZI. Mr. President, I yield any remaining time we have. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The question is, Will the Senate advise and consent to the nomination of Lester M. Crawford, of Maryland, to be Commissioner of Food and Drugs, Department of Health and Human Services. On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN), the Senator from Arizona (Mr. MCCAIN), and the Senator from Alaska (Ms. MURKOWSKI).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD), and the Senator from Arkansas (Mrs. LINCOLN) are necessarily absent.

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

The result was announced—yeas 78, nays 16, as follows:

[Rollcall Vote No. 190 Ex.]

YEAS—78

Akaka	Dole	Lott
Alexander	Domenici	Lugar
Allard	Ensign	Martinez
Allen	Enzi	McConnell
Bayh	Feingold	Nelson (FL)
Bennett	Feinstein	Nelson (NE)
Biden	Frist	Pryor
Bingaman	Graham	Reed
Bond	Gregg	Reid
Brownback	Hagel	Roberts
Bunning	Harkin	Rockefeller
Burns	Hatch	Salazar
Burr	Hutchison	Santorum
Byrd	Inhofe	Sarbanes
Carper	Inouye	Sessions
Chafee	Isakson	Shelby
Chambliss	Jeffords	Smith
Cochran	Johnson	Specter
Coleman	Kennedy	Stevens
Collins	Kerry	Sununu
Conrad	Kohl	Talent
Cornyn	Kyl	Thomas
Craig	Landrieu	Thune
Crapo	Leahy	Voinovich
DeMint	Levin	Warner
DeWine	Lieberman	Wyden

NAYS—16

Baucus	Durbin	Schumer
Boxer	Grassley	Snowe
Cantwell	Lautenberg	Stabenow
Clinton	Mikulski	Vitter
Dayton	Murray	
Dorgan	Obama	

NOT VOTING—6

Coburn	Dodd	McCain
Corzine	Lincoln	Murkowski

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2006—Continued

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to set aside the pending amendment for the purpose of offering an amendment.

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

AMENDMENT NO. 1250

Mr. GRASSLEY. Mr. President, I am going to offer an amendment. Before I send it to the desk, I want to speak to the amendment.

In March of 2004, the Export-Import Bank approved the issuance of $9.87 million in taxpayer-guaranteed credit insurance to help Angostura Holdings Limited, of Trinidad and Tobago, to finance the construction of an ethanol dehydration plant in Trinidad. The purpose of this credit insurance was to enable Angostura to purchase equipment to be used to dehydrate up to 100 million gallons of Brazilian ethanol annually. Angostura would then reexport the resulting dehydrated ethanol to the United States duty free under the current Caribbean Basin Initiative Trade Preference Program.

The credit insurance approval, however, had one major flaw. It appeared to violate the Export-Import Bank's authorizing statute. I want to explain that statute.

Section 635(e) of the Export-Import Bank's authorizing statute—that is the Export-Import Bank Act of 1945—states that the bank is not to provide credit or financial guarantees to expand production of commodities for export to the United States if the resulting production capacity is expected to compete with U.S. production of the same commodity and the extension of such credit will cause substantial injury—I emphasize ''substantial injury''—to U.S. producers of the same commodity.

The statute goes on to provide that ''the extension of any credit or guarantee by the Bank will cause substantial injury if the amount of the capacity for production established, or the amount of the increase in such capacity expanded, by such credit or guarantee equals or exceeds 1 percent of United States production,'' with emphasis upon exceeding 1 percent of United States production.

I want to go back to last year then. As of last year, when the credit guarantees for Angostura were approved, the total 100 million gallon capacity of the Angostura facility was nearly 4 percent of U.S. production. This amount clearly then exceeds the 1 percent threshold for causing substantial injury to the U.S. ethanol industry as spelled out in the Export-Import Bank's authorizing statute.

I want to make clear, we are not talking about changing existing policy. We are talking about not letting somebody use subterfuge to get around existing law. It appeared to me that the approval of credit guarantees for Angostura by the Export-Import Bank violated the bank's authorizing statute. Moreover, as the amount financed by the Export-Import Bank was less than $10 million—remember, we are talking about $9.87 million—there was no detailed economic impact analysis conducted by the bank. So it seems to me they were conveniently under the $10 million threshold as a way of muddying the waters, camouflaging this transaction, not drawing attention, not even taking their official look at the requirements of the statute by being about $130,000 under the $10 million threshold, hoping that somehow this would get by without our finding out about it.

In the Consolidated Appropriations Act of 2005, Congress asked the Export-Import Bank for an explanation of the credit guarantees for Angostura. Specifically, the 2005 Act required the Export-Import Bank to submit a report to

the Committees of Appropriations of the Senate and the House containing an analysis of the economic impact on U.S. ethanol producers of the extension of credit and financial guarantees for the development of the ethanol dehydration plant in Trinidad and Tobago. Congress also required that this report determine whether such an extension will cause substantial injury to such producers, as defined in section 2(e)(4) of the Export-Import Bank Act of 1945.

In January of this year, the Export-Import Bank provided its report. In its report, the Export-Import Bank skirted around the issue of whether its credit guarantees for Angostura caused substantial injury to U.S. producers, and thus whether the approval of these guarantees was in compliance with the Export-Import Bank's authorizing statute. The Export-Import Bank skirted the issue by claiming that the Angostura plant will not ''produce'' dehydrated ethanol. Rather, the Export-Import Bank stated that this plant will merely ''process'' dehydrated ethanol by removing water from wet ethanol produced in Brazil, thus merely ''adding value'' to the wet ethanol from Brazil.

The Export-Import Bank's response to Congress was, to be polite, a curious one. The Export-Import Bank's linguistic gymnastics aside, Angostura's plant will clearly be producing dehydrated ethanol. This is common sense. An ethanol dehydration plant—of course—produces dehydrated ethanol.

Moreover, the Customs Service recognizes that ethanol dehydration plants in Caribbean Basin Initiative countries produce dehydrated ethanol.

From what I can see, the Export-Import Bank's approval of credit guarantees for Angostura's ethanol plant violated the Export-Import Bank's authorizing statute by causing substantial injury to U.S. producers of the same commodity, in violation of the law. Accordingly, it is only right that no further funds should be provided for this facility.

My amendment would simply provide that no funds made available under the 2006 Foreign Operations Appropriations Act may be used by the Export-Import Bank to approve or administer a loan or guarantee for Angostura's ethanol dehydration plant. The credit guarantees for Angostura were improperly approved. Angostura, and ultimately Brazilian ethanol producers, should not continue to benefit from credit guarantees that were improperly provided by this bank.

I urge my colleagues to support this amendment.

I send the amendment to the desk and ask that it be read.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 1250.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the use of funds to approve or administer a loan or guarantee for certain ethanol dehydration plants)

On page 326 between lines 10 and 11 insert the following:

EXPORT-IMPORT BANK

SEC. 6113. None of the funds made available in this Act may be used by the Export-Import Bank of the United States to approve or administer a loan or guarantee, or an application for a loan or guarantee, for the development, or for the increase in capacity, of an ethanol dehydration plant in Trinidad and Tobago.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I ask unanimous consent to speak as in morning business.

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

INDEPENDENT SUPREME COURT

Mr. BAUCUS. Mr. President, in the Declaration of Independence, one reason our Founders decided for a revolution against King George was ''He has made judges dependent on his will alone.''

That same year, the Delaware Declaration of Rights and Fundamental Rules stated:

That the independence and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people.

In the Federalist Papers, explaining our great Constitution, Alexander Hamilton quoted Montesquieu to say:

There is no liberty, if the power of judging be not separated from the legislative and executive powers.

It is the independence of the Supreme Court that is at stake in the coming consideration of the Court's next nominee. Our Constitution embodies that independence of the Court in its separation of powers, in its checks and balances, and in its structure that provides of the President:

He shall nominate, and by and with the advice and consent of the Senate, shall appoint . . . judges of the Supreme Court.

The Senate's active advice and consent role in the confirmation of a Supreme Court Justice helps to ensure that nominees have the support of a broad political consensus. The Senate's role helps to ensure that the President cannot appoint extreme nominees. The Senate's role helps to ensure that Justices are more independent from the President.

Time and time again the history of our Supreme Court has demonstrated the importance of that independence. Time and time again, it has mattered that the Supreme Court had brave men and brave women who were willing to rule against the interests of the President. Time and time again, it has mattered that the President had to appoint independent thinkers that would withstand the tough scrutiny of the Senate.

It mattered that we had an independent court when our Nation was young, in 1803, when the Supreme Court decided the case of Marbury v. Madison. It mattered that we had an independent court so that Chief Justice Marshall could write for the Court:

It is emphatically the province and duty of the judicial department [that is the judiciary] to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each. . . . That is the very essence of judicial duty.

Today, most take for granted this bedrock principle of judicial review set forth in Marbury v. Madison. But recall the plaintiff in that case, William Marbury, challenged President Thomas Jefferson's administration. If the President, Thomas Jefferson, had been able to appoint Justices without an effective check by the Senate, then perhaps the President would have been able to appoint Justices who believed as he did—as Jefferson did—when he wrote, in 1820, a letter saying:

It is a very dangerous doctrine to consider the judges as ultimate arbiters of all constitutional questions.

Just think for a second what that means. President Thomas Jefferson, back in 1820, wrote that it was unfortunate and dangerous doctrine to consider judges as the ultimate arbiters of constitutional questions. If it wasn't he, who would it be? Clearly, Thomas Jefferson thought it would be he, the President, not the Supreme Court.

Without concern for the Senate's advice and consent, a more recent President might have appointed a Justice who believed as did former Attorney General Edwin Meese, 20 years ago, when Meese argued that the Supreme Court's interpretations of the Constitution, in his words, did not establish a ''supreme law of the land.'' That is Edwin Meese, who was U.S. Attorney General 20 years ago. And recall that Attorney General Meese asserted that the Reagan administration was free to rely on its own views on the meaning of the law.

That is revolutionary, and I don't use that word unadvisedly. It is a long-established principle that the Constitution is what the Supreme Court says it is. It has to be. The Constitution is not what the President says it is, it is what the Supreme Court says it is. The judiciary is a free, independent, third branch of Government.

It also mattered that we had an independent Supreme Court in 1952, when the Court decided Youngstown Sheet & Tube Company v. Sawyer, otherwise known as the ''steel seizure case.''

It was the time of the Korean War, and we faced a steel strike. President Truman tried to seize the steel companies in order to avert a strike. It mattered that we had an independent Supreme Court so that the Court could rule against President Truman—an independent arbiter saying: No, Mr.