

this. Countless callers, letters, meetings with FDA Commissioners went nowhere. Testimony and alarming data from public health groups and parents yielded no action. The FDA still failed to use its existing statutory authority to police these e-cigarette products, allowing millions of e-cigarettes to flood the market illegally, while the e-cigarette manufacturers made outrageous and unsubstantiated claims downplaying their risk to kids.

In 2019, finally, a Federal judge stepped in and ordered the FDA to do its job, instructing them to finalize the review of e-cigarettes—remember this date—by September 2021, last September. The FDA's court-ordered deadline to act on pending e-cigarette applications passed nearly 5 months ago—5 months. Yet, incredibly, many of the e-cigarettes used mostly by kids—the products fueling the epidemic—are still on the market today.

The law is clear on this issue. Tobacco companies must prove—they have the burden of proving—to the Food and Drug Administration that their product is “appropriate for the protection of the public health.” Why haven't they proved it? Because they can't. There is no evidence of it. So, if they can't meet the burden of proof, how do they continue to sell these products on the open market? Meeting that burden was supposed to be a condition precedent, the first thing they had to do to sell these e-cigarettes. Well, it is because the FDA, the Food and Drug Administration, is sitting on its hands. It is refusing to use its own legal and statutory authority. Big Tobacco continues to target “replacement smokers.” Those are our kids.

The Senate is expected to vote soon on a new FDA Commissioner. In determining who that person will be, we will have the opportunity. Let me change that. We have the responsibility to make it clear that the FDA has to stop dragging its feet. It must use the authority provided by Congress to prohibit tobacco companies from preying on our kids for profit.

As Congress evaluates the nominees, we must be guided by the answer to this question: Do we believe that the incoming FDA leadership will correct the failures that have gone before them in allowing these e-cigarette companies to prey on our kids?

Yesterday, I spoke to Dr. Califf, who is Joe Biden's nominee to be the head of the FDA. I have had serious misgivings about whether he is the right person for the job, but I finally relented yesterday and said: Yes, Dr. Califf, I will support you, but if you make it, I am going to hold you personally responsible for taking control of this issue.

Our kids' lives are at stake. We have waited too long. The FDA has sat on its hands when it should be moving to protect our kids. It is long overdue. In the interest of our children, I sincerely hope that the leadership of the FDA will open its eyes and do its duty.

I yield the floor.

The PRESIDING OFFICER (Ms. SMITH). The Senator from Indiana.

UNANIMOUS CONSENT REQUEST—S. RES. 494

Mr. BRAUN. Madam President, on January 22, 1973, the Supreme Court handed down their decision in *Roe v. Wade*, homogenizing an approach to abortion across the country. It is estimated that over 60 million lives have been lost to abortion since this decision.

This resolution recognizes January 22, into the future, as the Day of Tears. It encourages Americans to lower their flags to halfstaff to mourn the lives lost to abortion.

I am joined on this resolution by Senators DAINES, INHOFE, BLACKBURN, HAGERTY, LANKFORD, HAWLEY, and ROUNDS.

Similar resolutions have passed in Alabama, Arizona, Arkansas, Idaho, Louisiana, and West Virginia. Representative JODY HICE is leading a similar measure in the House. It has 51 cosponsors from 26 States.

Two weeks ago, thousands of Americans joined the March for Life to stand up for the unborn. Later this year, the Supreme Court will issue a decision on a case which strikes at the heart of *Roe v. Wade*. Our current abortion guidelines, we only have five other countries that would be similar. Two of those countries are China and North Korea. What does that say about abortion in America?

Minimally, the Court needs to return this to the States so that we don't have this policy put upon all of the States, at least half of which disagree with it. Whatever that decision may be, we must remember the millions of lives lost to the tragedy of abortion.

Madam President, as if in legislative session, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration and that the Senate now proceed to S. Res. 494. I further ask that the resolution be agreed to, that the preamble be agreed to, and that the motions to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

The Senator from Washington.

Mrs. MURRAY. Madam President, reserving the right to object.

Just weeks ago, we celebrated the anniversary of *Roe v. Wade*—the landmark decision that affirmed the right to abortion and changed so many lives for the better.

Across the country, patients spoke out about their experiences before *Roe*—about how *Roe* meant they could get an abortion they needed or even how, after *Roe*, they still struggled to get access to abortion. But what was present in all of those stories was real fear about what the future holds—the fear of what a country without *Roe* would look like—because that is what Republicans are pushing for all across the country.

Republicans in Texas passed SB 8, which bans abortions after 6 weeks and

allows people to sue anyone who helps someone get an abortion.

In Idaho, bordering my home State of Washington, extreme Republican legislators are trying to pass a law modeled after the Texas abortion ban.

Republicans in Mississippi brought a direct challenge of *Roe* to the Supreme Court and have told the Court, in no uncertain terms, they believe *Roe* should be overturned.

Now, those are just a few examples, and we have got one more here in the Senate today.

The resolution from the Senator from Indiana sends a message that the Republican Party knows best when it comes to some of the most personal decisions people make about their health and their futures, about when and whether to have children, and about what is best for themselves and their families.

Well, they don't.

In fact, the majority of Americans support *Roe* and do not want to see it overturned. They want a country where everyone can control their own bodies and their own futures, and that is exactly what I am fighting for so I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Indiana.

Mr. BRAUN. Madam President, the Senator from Washington makes the point that this is Republicans. This is not Republicans. Of course, they are for doing what needs to be done, and that is returning this to the States, minimally, taking a decision that was out of context back in 1973, when it was made.

And the opposite of the argument she made would be, Why should the Federal Government, based upon the judiciary ruling that was out of context, force this on the entirety of the country? When it comes to what it allows now—abortions late into a pregnancy—that is not supported by most of the country.

So, minimally, this ought to be returned to the States to reflect the views of the different States in this country—50 of them. Over half disagree with it, and over half of our citizens would say that it makes more sense than what we have now.

I yield the floor.

VOTE ON PUTTAGUNTA NOMINATION

The PRESIDING OFFICER. Under the previous order, all postcloture time has expired.

The question is, Will the Senate advise and consent to the Puttagunta nomination?

Mrs. MURRAY. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. LUJÁN), the Senator from Vermont (Mr. SANDERS), and the Senator from Maryland

(Mr. VAN HOLLEN) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from North Dakota (Mr. HOEVEN) and the Senator from Utah (Mr. ROMNEY).

Further, if present and voting: the Senator from North Dakota (Mr. HOEVEN) would have voted "nay."

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

The result was announced—yeas 57, nays 38, as follows:

[Rollcall Vote No. 21 Ex.]

#### YEAS—57

Baldwin	Hassan	Peters
Bennet	Heinrich	Portman
Blumenthal	Hickenlooper	Reed
Blunt	Hirono	Rosen
Booker	Kaine	Rounds
Brown	Kelly	Schatz
Cantwell	King	Schumer
Capito	Klobuchar	Shaheen
Cardin	Leahy	Sinema
Carper	Manchin	Smith
Casey	Markey	Stabenow
Collins	McConnell	Tester
Coons	Menendez	Tillis
Cortez Masto	Merkley	Toomey
Duckworth	Murkowski	Warner
Durbin	Murphy	Warnock
Feinstein	Murray	Warren
Gillibrand	Ossoff	Whitehouse
Graham	Padilla	Wyden

#### NAYS—38

Barrasso	Fischer	Paul
Blackburn	Grassley	Risch
Boozman	Hagerty	Rubio
Braun	Hawley	Sasse
Burr	Hyde-Smith	Scott (FL)
Cassidy	Inhofe	Scott (SC)
Cornyn	Johnson	Shelby
Cotton	Kennedy	Sullivan
Cramer	Lankford	Thune
Crapo	Lee	Tuberville
Cruz	Lummis	Wicker
Daines	Marshall	Young
Ernst	Moran	

#### NOT VOTING—5

Hoeven	Romney	Van Hollen
Lujan	Sanders	

The nomination was confirmed.

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

#### CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 556, Ebony M. Scott, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Charles E. Schumer, Gary C. Peters, Sheldon Whitehouse, Richard J. Durbin, Richard Blumenthal, Catherine Cortez Masto, Jacky Rosen, Margaret Wood Hassan, Mark Kelly, Benjamin L. Cardin, Brian Schatz, Debbie Stabenow, Angus S. King, Jr., Patrick J. Leahy, Martin Heinrich, Tim Kaine, Chris Van Hollen.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Ebony M. Scott, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. LUJÁN) and the Senator from Maryland (Mr. VAN HOLLEN) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from North Dakota (Mr. HOEVEN), the Senator from Kansas (Mr. MARSHALL), and the Senator from Utah (Mr. ROMNEY).

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

The yeas and nays resulted—yeas 58, nays 37, as follows:

[Rollcall Vote No. 22 Ex.]

#### YEAS—58

Baldwin	Heinrich	Reed
Bennet	Hickenlooper	Rosen
Blumenthal	Hirono	Rounds
Blunt	Kaine	Sanders
Booker	Kelly	Schatz
Brown	King	Schumer
Cantwell	Klobuchar	Shaheen
Capito	Leahy	Sinema
Cardin	Manchin	Smith
Carper	Markey	Stabenow
Casey	McConnell	Tester
Collins	Menendez	Tillis
Coons	Merkley	Toomey
Cortez Masto	Murkowski	Warner
Duckworth	Murphy	Warnock
Durbin	Murray	Warren
Feinstein	Ossoff	Whitehouse
Gillibrand	Padilla	Wyden
Graham	Peters	
Hassan	Portman	

#### NAYS—37

Barrasso	Fischer	Risch
Blackburn	Grassley	Rubio
Boozman	Hagerty	Sasse
Braun	Hawley	Scott (FL)
Burr	Hyde-Smith	Scott (SC)
Cassidy	Inhofe	Shelby
Cornyn	Johnson	Sullivan
Cotton	Kennedy	Thune
Cramer	Lankford	Tuberville
Crapo	Lee	Wicker
Cruz	Lummis	Young
Daines	Moran	
Ernst	Paul	

#### NOT VOTING—5

Hoeven	Marshall	Van Hollen
Lujan	Romney	

The PRESIDING OFFICER (Mr. HICKENLOOPER). The yeas are 58, and the nays are 37.

The motion is agreed to.

#### EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk reported the nomination of Ebony M. Scott, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

#### CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 557, Donald Walker Tunnage, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for a term of fifteen years.

Charles E. Schumer, Gary C. Peters, Sheldon Whitehouse, Richard J. Durbin, Richard Blumenthal, Catherine Cortez Masto, Jacky Rosen, Margaret Wood Hassan, Mark Kelly, Benjamin L. Cardin, Brian Schatz, Debbie Stabenow, Angus S. King, Jr., Patrick J. Leahy, Martin Heinrich, Tim Kaine, Chris Van Hollen.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Donald Walker Tunnage, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for a term of fifteen years, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. LUJÁN) and the Senator from Maryland (Mr. VAN HOLLEN) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from North Dakota (Mr. HOEVEN), the Senator from Kansas (Mr. MARSHALL), and the Senator from Utah (Mr. ROMNEY).

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

The yeas and nays resulted—yeas 57, nays 38, as follows:

[Rollcall Vote No. 23 Ex.]

#### YEAS—57

Baldwin	Hassan	Portman
Bennet	Heinrich	Reed
Blumenthal	Hickenlooper	Rosen
Blunt	Hirono	Rounds
Booker	Kaine	Sanders
Brown	Kelly	Schatz
Cantwell	King	Schumer
Capito	Klobuchar	Shaheen
Cardin	Leahy	Sinema
Carper	Manchin	Smith
Casey	Markey	Stabenow
Collins	Menendez	Tester
Coons	Merkley	Tillis
Cortez Masto	Murkowski	Toomey
Duckworth	Murphy	Warner
Durbin	Murray	Warnock
Feinstein	Ossoff	Warren
Gillibrand	Padilla	Whitehouse
Graham	Peters	Wyden

#### NAYS—38

Barrasso	Boozman	Burr
Blackburn	Braun	Cassidy