The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. I move to proceed to executive session to consider Calendar No. 866.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of James N. Stewart, of North Carolina, to be an Assistant Secretary of Defense.

CLOTURE MOTION

SENATOR. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The 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 James N. Stewart, of North Carolina, to be an Assistant Secretary of Defense.

Mitch McConnell, James Lankford, John Hoeven, James M. Inhofe, Johnny Isakson, David Perdue, John Cornyn, Steve Daines, John Barrasso, Mike Rounds, Thom Tillis, Lamar Alexander, James E. Risch, Jeff Flake, Richard Burr, Roy Blunt, Deb Fischer.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the mandatory quorum calls for the cloture motions be waived.

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

ORDERS FOR TUESDAY, OCTOBER 9, 2018

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 3 p.m., Tuesday, October 9; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; finally, following leader remarks, the Senate resume consideration of the House message to accompany S. 3021, and notwithstanding rule XXII, the Senate vote on the motion to invoke cloture on the motion to occur at 5:30 p.m.

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

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask that it stand adjourned under the previous order, following the remarks of Senator COONS.

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

The Senator from Delaware.

NOMINATION OF BRETT KAVANAUGH

Mr. COONS. Thank you, Mr. President.

I come to the floor to express my opposition to the nomination of Judge Kavanaugh to serve as Associate Justice of the U.S. Supreme Court.

I come with a profound regret. I come today with profound regret that this body has transformed from one that historically confirms Supreme Court Justices with broad and bipartisan support to one in which rules, norms, and courtesies fall away to serve the objectives of the majority and one in which Justices are confirmed by the absolute narrowest of margins.

I know I am not the only one to feel this way. We can simply wish for the bygone era of consensus to return, we can give speeches about bipartisanship with no hope of making progress, but to wish for it without doing the work of reaching across the aisle is empty talk without action, and as one who tries to inject some spirit of bipartisanship in what has been the most bitter and most divisive and most partisan fight I have seen in my 8 years here, I wanted to reflect for a moment before we close today on my views on the nomination of Judge Kavanaugh, the process that got us here and where we go next.

First, in this process, in this nomination, I saw barrier after barrier placed in front of consensus and bipartisanship and the proper functioning of the Senate Judiciary Committee on which I serve. These barriers prevented us from fully and effectively performing the advice and consent function to which we are called by the Constitution. We have to do better. There needs to be a reckoning with all that went wrong here.

I am sure that colleagues from the other side of the aisle may well have different views on exactly which steps or developments led to the sharply divided vote today and the heated and sharply divided hearing and proceedings of last week, and I welcome their input.

But I thought today I should, for me, recount the course of this nomination. It was fraught from the beginning because the Senate Judiciary Committee majority used an unprecedented and partisan process to rush this nomination while blocking access to millions of pages of documents of Judge Kavanaugh's service in the White House, potentially relevant to our deliberations.

For the first time since Watergate, the nonpartisan National Archives was cut out of the process for reviewing and producing the nominee's records, and Judge Kavanaugh's former deputy, who made his career representing Republican and partisan causes, was in charge of designating which documents this committee and the American people got to see.

Nonetheless, the committee pressed forward, despite objections from the minority to Judge Kavanaugh's hearing. During that hearing, I was, frankly, disappointed. Judge Kavanaugh was not fully forthcoming when discussing his interpretation of the Constitution and responding to timely and important questions about his record.

I asked Judge Kavanaugh why he repeatedly criticized Morrison v. Olson, a 30-year-old precedent about a now-extinct statute but a 30-year-old Supreme Court precedent holding that Congress can create an independent counsel with authority to investigate the President and whom the President cannot just fire on a whim.

I asked whether he still believes what he said in 1998, that a President can fire at will a prosecutor criminally investigating him. On these and other critical questions of Presidential power, Judge Kavanaugh would not respond. He would not tell me whether he believes all executive branch officials must be removable at will by the President, according to his view of Executive power.

I asked whether critical rights like rights of access to contraception, to abortion, the right to marry the person you love would be protected under the test to evaluate substantive due process that he has championed. Judge Kavanaugh has repeatedly cited a test for substantive due process that would limit the protection of liberty and interest to rights ''deeply rooted in our Nation's history and tradition,'' but he would not confront the consequences of applying this test going forward.

Judge Kavanaugh would also not condemn President Trump's attacks on the Federal Judiciary and the President's suggestions that the Justice Department should consider politics when making prosecutorial decisions. I asked Judge Kavanaugh about a comment he made on a panel at Georgetown when he said: ''If the President were the sole subject of a criminal investigation, I would say, no one should be investigating that.'' In fact, Judge Kavanaugh testified he didn't say that, but I reviewed the record.

I followed up with a series of questions for the record to get additional information I think the American people should know and to give Judge Kavanaugh a chance outside of our brief exchanges in the confirmation process to explain his suggestions that perhaps I had misquoted him. Unfortunately, I instead received pages of nonanswers.

When I asked Judge Kavanaugh specific questions about his criticism of Morrison v. Olson, he simply referred to his prior testimony and said he had ''nothing further to add here.'' He would not explain how his proffered test for substantive due process is consistent with the Court's landmark marriage equality decision by Justice Kennedy in Obergefell.

After the hearing was over, I learned of Dr. Ford's allegations that Judge