

mind, and the ABA's report found Mr. VanDyke to be lacking a commitment to the truth.

In order to see how the ABA came to this conclusion, one only needs to look at Mr. VanDyke's record of pursuing an ideological agenda instead of working for the people and defending the law. In his past role as attorney general of Montana, he filed many politically driven briefs, including one asking the Supreme Court to strike down *Roe v. Wade* altogether, a view that is out of step with the views of Nevadans. He even signed the State onto one brief without reading it, by his own admission.

Mr. VanDyke has also made controversial and appalling statements about LGBTQ Americans, writing this: "[There is] ample reason for concern that same-sex marriage will hurt families, and consequentially children and society."

Mr. VanDyke was given every opportunity to disavow this statement and repeatedly declined to do so. Allowing Mr. VanDyke to serve on the Ninth Circuit would put at risk the rights of thousands of LGBTQ Americans to employment, healthcare, housing, and basic equal treatment in what is often the court of last resort.

Surely you must agree, no matter who is President or who controls the Senate, you would want qualified judges with connections to the State who will be fair to your constituents and not use cases to advance their personal ideological agenda.

I oppose the nomination of Mr. VanDyke, and if it is withdrawn or voted down, I will be ready at a moment's notice to work with this White House in finding a fair, qualified, and non-partisan nominee from Nevada. The people of my home State and yours deserve nothing less.

I yield the floor.

## RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:33 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mrs. CAPITO).

## EXECUTIVE CALENDAR—Continued

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the Bumatay nomination?

Mr. HEINRICH. 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.

Mr. DURBIN. I announce that the Senator from Colorado (Mr. BENNETT), the Senator from New Jersey (Mr. BOOKER), the Senator from California (Ms. HARRIS), the Senator from Minnesota (Ms. KLOBUCHAR), the Senator

from Vermont (Mr. SANDERS), the Senator from Virginia (Mr. WARNER), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

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

The result was announced—yeas 53, nays 40, as follows:

[Rollcall Vote No. 387 Ex.]

### YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Isakson	Scott (FL)
Collins	Johnson	Scott (SC)
Cornyn	Kennedy	Shelby
Cotton	Lankford	Sullivan
Cramer	Lee	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

### NAYS—40

Baldwin	Heinrich	Rosen
Blumenthal	Hirono	Schatz
Brown	Jones	Schumer
Cantwell	Kaine	Shaheen
Cardin	King	Sinema
Carper	Leahy	Smith
Casey	Manchin	Stabenow
Coons	Markey	Tester
Cortez Masto	Menendez	Udall
Duckworth	Merkley	Van Hollen
Durbin	Murphy	Whitehouse
Feinstein	Murray	Wyden
Gillibrand	Peters	
Hassan	Reed	

### NOT VOTING—7

Bennet	Klobuchar	Warren
Booker	Sanders	
Harris	Warner	

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 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 Lawrence VanDyke, of Nevada, to be United States Circuit Judge for the Ninth Circuit.

Mitch McConnell, Tom Cotton, John Boozman, Mike Crapo, Thom Tillis, Chuck Grassley, Jerry Moran, Kevin Cramer, John Barrasso, Mike Braun, Joni Ernst, Pat Roberts, John Cornyn, Roy Blunt, John Thune, Lindsey Graham, Roger F. Wicker.

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 Lawrence VanDyke, of Nevada, to be United States Circuit Judge for the Ninth Circuit, 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 Colorado (Mr. BENNETT), the Senator from New Jersey (Mr. BOOKER), the Senator from California (Ms. HARRIS), the Senator from Minnesota (Ms. KLOBUCHAR), the Senator from Vermont (Mr. SANDERS), the Senator from Virginia (Mr. WARNER), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

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

The yeas and nays resulted—yeas 53, nays 40, as follows:

[Rollcall Vote No. 388 Ex.]

### YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Isakson	Scott (FL)
Collins	Johnson	Scott (SC)
Cornyn	Kennedy	Shelby
Cotton	Lankford	Sullivan
Cramer	Lee	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

### NAYS—40

Baldwin	Heinrich	Rosen
Blumenthal	Hirono	Schatz
Brown	Jones	Schumer
Cantwell	Kaine	Shaheen
Cardin	King	Sinema
Carper	Leahy	Smith
Casey	Manchin	Stabenow
Coons	Markey	Tester
Cortez Masto	Menendez	Udall
Duckworth	Merkley	Van Hollen
Durbin	Murphy	Whitehouse
Feinstein	Murray	Wyden
Gillibrand	Peters	
Hassan	Reed	

### NOT VOTING—7

Bennet	Klobuchar	Warren
Booker	Sanders	
Harris	Warner	

The PRESIDING OFFICER. The yeas are 53, the nays are 40.

The motion is agreed to.

## EXECUTIVE CALENDAR

The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Lawrence VanDyke, of Nevada, to be United States Circuit Judge for the Ninth Circuit.

## LEGISLATIVE SESSION

## OVER-THE-COUNTER MONOGRAPH SAFETY, INNOVATION, AND REFORM ACT OF 2019

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to legislative session and the consideration of S. 2740, which the clerk will report.

The senior assistant legislative clerk read as follows:

A bill (S. 2740) to amend the Federal Food, Drug, and Cosmetic Act to clarify the regulatory framework with respect to certain nonprescription drugs that are marketed without an approved new drug application, and for other purposes.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Madam President, the Senate is about to vote on the Over-the-Counter Monograph Safety, Innovation, and Reform Act of 2019.

I want to thank my friend and colleague Senator ISAKSON for his good work on this for many years, Chairman ALEXANDER, and Ranking Member PATTY MURRAY.

The current OTC monograph system is broken, and what we are talking about, in simple form, is literally what is on your pill bottle, that kind of information.

It is a broken system. The FDA doesn't have the authority to move swiftly when there is a threat to public health; it doesn't have the opportunity to update existing monographs; and there is no incentive for innovation.

This legislation is decades overdue. I am grateful for the good work of so many who made it possible. It is a commonsense bill, consumer group supported, industry stakeholder supported, and of course the FDA not only supports it but needs it.

I will now yield to my friend and colleague, Senator JOHNNY ISAKSON.

Mr. ISAKSON. Madam President, I thank the Senator from Pennsylvania.

If you want to go home on time, if you want to take something home to give to the American people that they want and they need, then you will vote with me and the other Members who have spoken on the Over-the-Counter Monograph bill today.

There are sunscreens on the market in Europe that are 12 years short of being on the market in America all because of an antiquated approval system to make sure they are safe but to get them to the market in time. It is about time we ended melanoma, and it is about time we got American consumers what they want. It is about time we settle the problem. It has been a problem for a long time.

So I ask you—in fact, I plead with you—to vote for this bill, and you will make everybody happy, nobody mad, and you will save a life. There is nothing better than that.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Madam President, I ask unanimous consent to speak for 1 minute in opposition.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BURR. Madam President, I reluctantly rise in opposition to this legislation, and I have worked with Senator ISAKSON over the years on FDA legislation.

I want to be perfectly clear that I agree with all of the reforms that are in this piece of legislation within the over-the-counter division at FDA. I simply disagree with the way in which this legislation provides the resources to achieve these reforms because I don't believe it will result in what the expectations are of the authors.

When the drug industry first agreed to user fees in 1993, the fee to file a new drug application was \$100,000. Today that fee is \$2.1 million. To that end, the FDA has struggled to uphold its end of the bargain, falling behind in its commitment to hire the number of employees the agency needs to actually review the applications that cost millions of dollars to file.

The FDA continues to increase the amount of user fee dollars it requires to review applications, eroding the balance of congressional oversight provided by the appropriation of taxpayer dollars.

I encourage my colleagues that what JOHNNY is trying to do is the right thing to do, but it is the wrong way to pay for it.

I yield the floor.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

Mr. CARDIN. 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 Colorado (Mr. BENNET), the Senator from New Jersey (Mr. BOOKER), the Senator from California (Ms. HARRIS), the Senator from Minnesota (Ms. KLOBUCHAR), the Senator from Vermont (Mr. SANDERS), the Senator from Virginia (Mr. WARNER), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

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

The result was announced—yeas 91, nays 2, as follows:

[Rollcall Vote No. 389 Leg.]

YEAS—91

Alexander	Boozman	Carper
Baldwin	Braun	Casey
Barrasso	Brown	Cassidy
Blackburn	Cantwell	Collins
Blumenthal	Capito	Coons
Blunt	Cardin	Cornyn

Cortez Masto	Jones	Rosen
Cotton	Kaine	Rounds
Cramer	Kennedy	Rubio
Crapo	King	Sasse
Cruz	Lankford	Schatz
Daines	Leahy	Schumer
Duckworth	Lee	Scott (SC)
Durbin	Manchin	Shaheen
Enzi	Markey	Shelby
Ernst	McConnell	Sinema
Feinstein	McCally	Smith
Fischer	Menendez	Stabenow
Gardner	Merkley	Sullivan
Gillibrand	Moran	Tester
Graham	Murkowski	Thune
Grassley	Murphy	Tillis
Hassan	Murray	Toomey
Hawley	Paul	Udall
Heinrich	Perdue	Van Hollen
Hirono	Peters	Whitehouse
Hoeven	Portman	Wicker
Hyde-Smith	Reed	Wyden
Inhofe	Risch	Young
Isakson	Roberts	
Johnson	Romney	

NAYS—2

Burr  
Scott (FL)

NOT VOTING—7

Bennet	Klobuchar	Warren
Booker	Sanders	
Harris	Warner	

The bill (S. 2740) was passed, as follows:

S. 2740

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Over-the-Counter Monograph Safety, Innovation, and Reform Act of 2019”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—OTC DRUG REVIEW

Sec. 101. Regulation of certain nonprescription drugs that are marketed without an approved drug application.

Sec. 102. Misbranding.

Sec. 103. Drugs excluded from the over-the-counter drug review.

Sec. 104. Treatment of Sunscreen Innovation Act.

Sec. 105. Annual update to Congress on appropriate pediatric indication for certain OTC cough and cold drugs.

Sec. 106. Technical corrections.

#### TITLE II—USER FEES

Sec. 201. Short title; finding.

Sec. 202. Fees relating to over-the-counter drugs.

#### TITLE I—OTC DRUG REVIEW

#### SEC. 101. REGULATION OF CERTAIN NON-PRESCRIPTION DRUGS THAT ARE MARKETED WITHOUT AN APPROVED DRUG APPLICATION.

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act is amended by inserting after section 505F of such Act (21 U.S.C. 355g) the following:

#### “SEC. 505G. REGULATION OF CERTAIN NON-PRESCRIPTION DRUGS THAT ARE MARKETED WITHOUT AN APPROVED DRUG APPLICATION.

“(a) NONPRESCRIPTION DRUGS MARKETED WITHOUT AN APPROVED APPLICATION.—Nonprescription drugs marketed without an approved drug application under section 505, as of the date of the enactment of this section, shall be treated in accordance with this subsection.

“(1) DRUGS SUBJECT TO A FINAL MONOGRAPH; CATEGORY I DRUGS SUBJECT TO A TENTATIVE FINAL MONOGRAPH.—A drug is deemed to be