

1986, or many times since that time, when at that time the Chief Justice Rehnquist nomination was on the line.

What does history tell us? History tells us that 31 of my colleagues on the other side of the aisle were prepared to filibuster a nominee to one of the highest positions of our Government, and today many of those who supported this filibuster allege unfairness when Republicans exercise the same right—the same right—only this is a minor office compared to the Chief Justice of the Supreme Court.

We are talking about a nominee to an office with a budget of under \$1 million with a staff of six. But he is supposed to make certain everybody is taken care of, all the medical problems are going to be taken care of if we just vote yes on this nomination, according to my distinguished colleague from South Dakota, Senator DASCHLE.

In fact, I remember my colleague from Massachusetts arguing against the Justice Rehnquist confirmation because he "lacked candor in testifying before the Senate Judiciary Committee" and because of Justice Rehnquist's "alleged pattern of explanations * * * that are contradicted by others or are misleading or do not ring true."

Does that sound familiar? Many of us said this time the same thing about Dr. Foster.

I have talked to him personally, others have talked to him, others who are on the committee. We should not have the right to make that judgment because we are Republicans, but it is all right to make it against the Chief Justice nominee for the U.S. Supreme Court.

So, Mr. President, facts can be stubborn things. They are rarely noted by the media, not often used in this Chamber. But they show that we have a double standard and it is alive and well in Washington, DC. And it goes on and on and on. We hear all the hand wringing over there and all the talk of Presidential politics on this side and nothing about Presidential politics downtown. This is not about Presidential politics. That may be a good sound bite. This is about Dr. Foster and his qualifications for the office, and it is about our right to advise and consent.

I must say, as I look back on it, we could have chosen other options, but it seemed to me this was a fair option, just as fair as it was for Justice Rehnquist who was nominated to be Chief Justice.

Cloture was invoked in that case. Cloture can be invoked in this case. The issue is not whether cloture was invoked on 22 of the 24 nominations that have been subjected to cloture procedure. This is a false distinction. What is important is we have had 24 nominations subjected to a cloture vote. So he can get an up-or-down vote, all he needs to do is get 60 votes on this, as others have done in the past.

I do not question those who say Dr. Foster is probably a fine person. I do

not know Dr. Foster that well. I have had one visit with him. I do not snoop around about his past. I think Senator DANFORTH was right when he made that statement: Tell it to the family of John Tower when you talk about allegations and stuff over the transom, under the transom and wrecking somebody's character; tell it to John Tower's family. He is gone.

Tell it to Robert Bork. Tell it to his wife when they were harangued and harassed day after day after day by the Judiciary Committee.

Tell it to Bill Lucas and his family, the fine outstanding sheriff of Wayne County, MI, an outstanding black American who did not even get a vote, any kind of a vote on this floor, because the Judiciary Committee voted, in a 7-7 tie, and would not report him out.

That is the thing the Democrats do not tell us: How many Republicans never had a hearing, were never reported out of the committee, and when they were reported out, they stayed on the calendar; never had the courtesy to even have a cloture vote. They died on the calendar.

I have not heard anybody say anything about that over there, and I put those facts in the RECORD. I thought surely somebody would get up and explain why the Democrats would do that when they talk about fairness and their hearts ache and they cannot sleep at night. Why do they not read the RECORD and go back and call all the families of the people who did not even get a hearing or were on the calendar week after week after week, month after month after month and never even had the courtesy of a vote, not even a cloture vote.

So I know all about it. I have been here a while, and I keep track of these things. What comes around goes around, and none of us are perfect. When we make arguments on the Senate floor, we ought to go back and look at the last argument we made and the one before that to see if it is consistent and how did we vote on Rehnquist before standing up to make a speech.

I can recall in 1980 joining with the Senator from Massachusetts, Senator KENNEDY, when they wanted to block John Breyer's nomination. I said it should not be blocked, and I voted for cloture, and we succeeded. He was a Democrat, so it is not politics.

This nomination was flawed from the start, and the President knows it. But he sought to divide the American people on the issue of abortion. That is all this nomination is about, trying to divide the American people for political purposes, and the President talks about politics and his Chief of Staff Leon Panetta goes on television this morning in some outrageous statement about a vengeance up here—vengeance—which means they must be losing.

So I wish Dr. Foster well. No one likes to see someone who may want to have a job denied that opportunity. I

met with a lot of the families who did not even get a vote of any kind because they were Republicans in a Democratic Senate. Well, Dr. Foster is getting a vote. I promised him that, and he is getting it very quickly, in 2 days.

I met with him on Monday, and here it is Thursday, and we are going to have the second vote. I think his initial lack of candor and certainly lack of truthfulness on the part of the White House made this nomination in doubt from the start.

So whether it is his misleading statements concerning his abortion record, or his alleged knowledge of the infamous Tuskegee syphilis study or involvement in sterilizing several mentally retarded women, there are just too many questions. If the Senator from Massachusetts can say that somebody lacks candor, maybe we can say it with the same credibility on this side of the aisle. Maybe we are not entitled to that because we are Republicans, only the liberals are entitled to make those judgments. But we are, too.

As I said yesterday, we need somebody in that position to be America's doctor—not Republicans, not pro-life, not pro-choice, not Democrats, not conservatives, not liberals, but America's doctors. It is not a policy position, it is a public relations job, with a staff of six. The world will not come to an end if we do not ever fill this office or if it is abolished.

So it seems to me we do not want somebody to divide us, as the previous Surgeon General did, about legalization of drugs and all the other statements made by that Surgeon General, but that has nothing to do with this nomination. My point is, if there is somebody out there, there are thousands and thousands of good people out there who can unite America, unite Americans, whatever they can do in that office, and this is not the right nomination.

Again, I agree with Senator DANFORTH. I wonder sometimes why anybody would accept a nomination, but I do not know anybody on this side who has been personal about Dr. Foster. I am proud of the fact he is a veteran. As far as I can see, he is a good person. We had a nice visit. But also we have to have a record, and the record, I think, is the problem: His lack of candor.

So we are proceeding, I think, in a very fair way, as we look at history and look at the record and look at how quickly this nomination has moved.

It seems to me cloture should not be invoked and this nomination would go back on the calendar, as the unanimous-consent agreement indicates.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. THOMPSON). The hour of 2 p.m. having arrived, under the previous order, the clerk will report the motion to invoke cloture.

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 Executive Calendar No. 174, the nomination of Dr. Henry W. Foster, to be Surgeon General of the United States:

Senators Christopher Dodd, Carl Levin, Dianne Feinstein, James Exon, Harry Reid, Daniel K. Akaka, Claiborne Pell, Richard Bryan, Patty Murray, Bob Graham, Max Baucus, Frank R. Lautenberg, Russell D. Feingold, Barbara Mikulski, Barbara Boxer, Edward Kennedy, Tom Daschle, and Carol Moseley-Braun.

CALL OF THE ROLL

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

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the nomination of Henry W. Foster, Jr., to be Surgeon General, shall be brought to a close?

The yeas and nays have been required.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 57, nays 43, as follows:

[Rollcall Vote No. 280 Ex.]

YEAS—57

Akaka	Feinstein	Levin
Baucus	Ford	Lieberman
Biden	Frist	Mikulski
Bingaman	Glenn	Moseley-Braun
Boxer	Gorton	Moynihan
Bradley	Graham	Murray
Breaux	Harkin	Nunn
Bryan	Heflin	Packwood
Bumpers	Hollings	Pell
Byrd	Inouye	Pryor
Campbell	Jeffords	Reid
Chafee	Johnston	Robb
Cohen	Kassebaum	Rockefeller
Conrad	Kennedy	Sarbanes
Daschle	Kerrey	Simon
Dodd	Kerry	Simpson
Dorgan	Kohl	Snowe
Exon	Lautenberg	Specter
Feingold	Leahy	Wellstone

NAYS—43

Abraham	Gramm	McConnell
Ashcroft	Grams	Murkowski
Bennett	Grassley	Nickles
Bond	Gregg	Pressler
Brown	Hatch	Roth
Burns	Hatfield	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Smith
Coverdell	Inhofe	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Dole	Lugar	Warner
Domenici	Mack	
Faircloth	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

Under the previous order, the nomination is returned to the calendar.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 440) to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

The Senate continued with the consideration of the bill.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Virginia.

Mr. WARNER. Mr. President, the managers wish to report steady progress on this bill. However, we have an amendment now being reviewed by all parties involved in the Stevens-Murkowski amendment. We are awaiting a report back on their negotiations, which I am hopeful will resolve these issues.

Mr. BAUCUS. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mr. WARNER. Mr. President, I believe we can now proceed.

Once again, I wish to inform the Senate on behalf of the managers that we are making progress. The one remaining amendment which is yet to really be fully reconciled is that regarding the issues in Alaska, the amendment proposed, of course, by the senior Senator and junior Senator, Mr. STEVENS and Mr. MURKOWSKI.

Until that matter is further refined, I have nothing further at this time and I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 1464

Mr. CHAFEE. Mr. President, on behalf of Senator SMITH and Senator GREGG, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. SMITH, for himself and Mr. GREGG, proposes an amendment numbered 1464.

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

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

The amendment is as follows:

At the appropriate place on the bill add the following new section:

SEC. .

The State of New Hampshire shall be deemed as having met the safety belt use law requirements of section 153 of title 23 of the U.S. Code, upon certification by the Secretary of Transportation that the State has achieved—

(a) a safety belt use rate in each of fiscal years ending September 30, 1995 and September 30, 1996, of not less than 50 percent; and

(b) a safety belt use rate in each succeeding fiscal year thereafter of not less than the national average safety belt use rate, as determined by the Secretary of Transportation.

Mr. GREGG. Mr. President, I rise in support of this amendment which allows New Hampshire to meet the safety belt use law requirements under section 153 of ISTEA. Under this amendment, highway safety funds would not be transferred from highway construction projects to highway safety programs if the safety belt use rate in fiscal years ending September 30, 1995, and September 30, 1996, is not less than 50 percent. In fiscal years thereafter safety belt rate shall not fall below the national average as determined by the Secretary of Transportation.

It is my belief that the Federal Government should not mandate seatbelts; those decisions should be left to the States. I believe all individuals should wear seatbelts whenever they ride in a vehicle. Furthermore, I believe that local government, not the Federal Government, should continue to play a role in educating people regarding the need to take every precaution when operating a vehicle.

As a former Governor, I realize firsthand the frustration local government experiences when the Federal Government attempts to micromanage public policy. Americans no longer want big brother looking over their shoulder attempting to force compliance with regard to seatbelt compliance.

I am pleased that this amendment, which allows New Hampshire to be judged on its safety record for safety belt usage, has been adopted. This amendment will remove the current unfair mandatory penalties forced on New Hampshire without regard for its excellent seatbelt compliance record.

Mr. CHAFEE. Mr. President, this is an amendment that takes care of a particular situation that has arisen in New Hampshire and addresses the desires of the Senators there. They are doing extremely well as far as their seatbelt usage goes. This makes them continue in that path and move up to the national average as time goes on.

It is an amendment that has been cleared by both sides, and I think it is a good one.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. May I ask the distinguished chairman of the committee, is this the same version the chairman showed me not too long ago, maybe about an hour or so ago?

Mr. CHAFEE. Yes.

Mr. BAUCUS. Mr. President, we have examined this amendment and we think it is acceptable.

Mr. SMITH. Mr. President, I want to thank the managers of this bill, the Senators from Rhode Island, Virginia,