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## House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, September 8, 2009, at 2 p.m.

## Senate

WEDNESDAY, AUGUST 5, 2009

The Senate met at 9:30 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, holy, powerful, loving, good, thank You for expressing Your love to us with generous gifts. We are grateful for the gift of Your mercy, which delivers those bruised and battered by life. Thank You also for the peaceful satisfaction You give us as we strive to do Your will. Lord, You have sustained our families and loved ones and nourished us with the blessings of faithful friends. You also have honored us with the privilege of being called your children. You have showered our land from Your bounty with freedom, justice, strength, and resilience.

Thank You for our lawmakers, who work to keep America strong, and for our military men and women and their families, who daily sacrifice to keep us free. Lord of hosts, we lift to You this day our gratitude and praise. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication

to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, August 5, 2009.

To the Senate:

Under the provisions of rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. UDALL thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Mr. President, following leader remarks, there will be a period of morning business until 10 a.m., with Senators permitted to speak therein for up to 10 minutes each.

Following that morning business, the Senate will resume consideration of the nomination of Sonia Sotomayor to be an Associate Justice of the Supreme Court of the United States. Debate will be controlled at alternating times, with the majority controlling the first hour, starting at 11 o'clock, and the time between 2 and 3 p.m. will be equally divided and controlled, with the majority controlling the first 30

minutes and the Republicans controlling the final 30 minutes.

Because of the special caucus the Democrats are having, we will be in recess from 3 until 5 p.m. When the Senate reconvenes, the Senate will resume the 1-hour alternating blocks of time, with the Republicans controlling the first hour.

In addition to the Supreme Court nomination that we need to deal with, there are two major items we need to complete before we leave for the August recess. First, we have to have some way of moving forward on the travel promotion and on the cash for clunkers. If we don't work something out on cash for clunkers, I will file a cloture motion this evening, which means we will have to have a cloture vote on Friday. If people want to use the 30 hours, it goes over until Saturday. I don't think that is the case. I have had a number of very good conversations with the Republican leader, and we all acknowledge that a significant majority want to move forward with this legislation that has resulted in the sales, in a period of days, of almost 300,000 vehicles. For us, the taxpayers, it creates jobs, helps our manufacturing base and helps the taxpayers, in effect, who loaned money to these two manufacturers. This will help them repay that money. It has been stimulative, and we recognize that.

That having been said, some people still don't like the program. So we have to figure a way to move through that. It is my understanding that the Democrats have one amendment. I have explained it to the Republicans. The Republicans have a long list of

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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amendments. They are going to have to whittle that down to a reasonable number so we can deal with them soon. I hope we can work something out so that we can meet our responsibilities.

We also have a number of nominations that have been held up as a result of the Supreme Court nomination. We hope all of that can be taken care of as soon as she is confirmed.

#### MEASURE PLACED ON CALENDAR—S. 1572

Mr. REID. Mr. President, I am told that S. 1572 is due for a second reading and is now at the desk.

The ACTING PRESIDENT pro tempore. The majority leader is correct.

The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (S. 1572) to provide for a point of order against any legislation that eliminates or reduces the ability of Americans to keep their health plan or their choice of doctor or that decreases the number of Americans enrolled in private health insurance, while increasing the number of Americans enrolled in government-managed health care.

Mr. REID. Mr. President, I object to further proceedings with respect to this legislation.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to a period of morning business until 10 a.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Florida is recognized.

#### SEARCH FOR CAPTAIN SCOTT SPEICHER

Mr. NELSON of Florida. Mr. President, I want to call to the attention of the Senate, and thank the Pentagon for its dogged pursuit in finding the evidence of CPT Scott Speicher, U.S. Navy, the pilot of the F-18 Hornet who was shot down on the first night of the gulf war back in 1991.

This saga has evolved over the last 18 years. The Pentagon became lax in the 1990s and did not pursue the finding of evidence, and there were all kinds of reports that Captain Speicher may have been alive and held in a prison. You can imagine the trauma, the emotional ups and downs, that occurred to the family, which included the children who were quite young at the time and are now at the age that they are in college. Fortunately, the Pentagon, about 8 or 9 years ago, got serious about the

search. When we invaded Iraq in 2003, they even created a search team. Again, there were all of these false leads that there had been the sighting of a pilot. An Iraqi refugee said he saw an American pilot in a prison. It went on and on.

Of course, the hopes of the family were that CPT Scott Speicher was going to be found alive.

Our Pentagon even went so far—and I commend them—that one of the first sets of questions on the debriefing of any Iraqi detainee—and especially the high-value detainees—the question would be asked, “Do you know about an American pilot?” All of these leads turned out to be false or they led to nothing. So it was that we expected that what would happen to find the final evidence would be a Bedouin tribe that would have been in the area of the Iraqi desert at the time Captain Speicher punched out, or ejected, from his jet that was hit.

The irony was that Scott was not even supposed to fly that first attack wave, but another member of the squadron got sick and he filled in. Either he was hit with a ground-to-air missile or somehow in the aerial combat of the darkness of that night, and he ejected from his airplane. The rest has been a mystery until a Bedouin, thought to have been a younger child at the time, in 1991, remembered a pilot being buried. He could not identify the location, but knew of another Bedouin who was an adult at the time, and that Bedouin ultimately led the marines to the site and an extensive investigation and excavation that occurred on the Iraqi desert floor.

So all who have participated—the Army Reserve, Major Eames, who led the Scott Speicher search party, and who extended his duty voluntarily for an additional 6 weeks way back in 2003, because he was absolutely intent that he was going to find this downed pilot. For all of those, including the Chairman of the Joint Chiefs and the CNO, who have now brought this to closure, because last weekend they found the remains of Captain Speicher, with a positive identification through one of his jawbones with his military dental records, to be confirmed even further by DNA evidence. We know now that Captain Speicher can be brought home and his family can have final closure.

I will conclude by saying that a mistake was made that we never want to repeat. Because of him being mistakenly declared dead at a press conference the next morning after that first night attack in the first gulf war—he was mistakenly declared dead by the Secretary of Defense—we did not send a search and rescue mission. Every military pilot has to have the security of knowing that if he has to eject, a search and rescue mission is coming after him. That is the mistake we will not make again.

For the family, and on behalf of them, I want to say to the Pentagon and to the other Senators who have

participated in this 18-year quest on behalf of Scott's family in Florida, thank you from the bottom of their hearts.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized.

#### BANKRUPTCY REFORM

Mr. DURBIN. Mr. President, if you look at the root cause of our economic crisis today, most people would agree that it started in the housing industry. People across America signed up for these new mortgages—adjustable rate mortgages—with terms that some people had never seen before. Sometimes they were terms that turned out to be unrealistic for the person's income and the value of the property; and at the end of a reset period, what was an affordable mortgage became unaffordable. People were then faced with the grim reality that they could not stay in their homes.

Some of the folks who entered into these mortgages signed up for bad mortgages. Others were misled into them. Some signed up for a mortgage and lost their jobs. The net result of it, though, was that we saw foreclosures across America in record numbers.

About 2 years ago, I started a legislative effort to change the Bankruptcy Code. The Bankruptcy Code is a set of laws for those who declare bankruptcy, and those who go into it try to restructure their debts and emerge from bankruptcy in a solid financial position.

When they go to court, virtually any secured asset, that is, a debt which has a security of the thing that is borrowed against, can be restructured by the court. If it is a vacation home, a mortgage on a vacation home, a mortgage on a ranch or a farm, a secured debt on a boat, a car—things such as these can be restructured by the court to try to come down to terms that are affordable based on the reality of the income of the person filing bankruptcy. There is one exception to this: the court cannot restructure the mortgage on a primary residence. Of all of the things we own, maybe the most important thing is our home, and the law specifically precludes the bankruptcy court from restructuring the mortgage. So, facing bankruptcy, you go in with your mortgage in foreclosure, and the court says: There is nothing we can do. We might be able to do something about your vacation home, your farm, or your ranch, but nothing about your home. So people end up having their homes foreclosed upon.

It struck me that we needed to change this because there was a time when people would borrow money for their home, take out a mortgage from a bank down the street, from a banker they knew, and they would make their payments to that bank. That world changed when banks started selling the paper off to other banks and institutions, and then it went wild. It went

beyond another bank or institution into groups of investors who bought a piece of a share of your mortgage. Someone may have bought an interest in the interest payments you were going to make in the fifth year of your mortgage. So what started off as a bank down the street that you knew personally at a closing turned out to be a group of financial institutions you didn't even know and never heard of and may never, ever learn the identity of. So when time came for foreclosure, you had to herd in all of these financial cats and try to get everyone to agree with what would happen next, and it became impossible.

Well, my idea 2 years ago was to change the Bankruptcy Code to allow the bankruptcy court to restructure and rewrite the mortgage terms so that a person could stay in their home just as they could continue to own a vacation home. It seemed to me a modest suggestion but one of value because it gave the court a voice in saying to all of these different lenders that had a piece of your mortgage: You all better come together and gather around the table because we are going to make a decision in this court, and you just can't ignore it.

I introduced this almost 2 years ago. It had staunch opposition from the banking industry. They did not want to give that power to the bankruptcy court, and they said: You anticipate only 2 million foreclosures in America, so we don't see the need for a change in the Bankruptcy Code.

Really? A recent study by the Boston Federal Reserve found that, in 2007 and 2008, just 3 percent of homeowners at risk of foreclosure received modifications that reduced their monthly payments. Just 3 percent of troubled homeowners received any real help.

Another study found that more mortgage modifications increased the mortgage balance than decreased the balance.

I called the bill on the floor, and I lost. Well, today, we are facing over 9 million foreclosures in bankruptcy. The banking industry is still vehemently opposed to any type of change in the bankruptcy law, and when it comes to foreclosures in America, the situation is going from bad to worse.

This morning's New York Times business section has a headline: "U.S. Effort Aids Only 9 Percent of Eligible Homeowners." The article is about the voluntary efforts of mortgagors to renegotiate the terms of mortgages for people facing foreclosure. If a person is facing foreclosure because of a reset in mortgage terms and the foreclosure goes through, it is a disastrous result for the family—they lose their home; it is a disastrous result for the neighborhood because every time a home goes into foreclosure, the neighbors' home values go down—this year alone, foreclosures will drain more than \$500 billion from neighboring home values; and it is a disastrous result for the bank. Banks don't win in foreclosure. I have

heard estimates that they lose up to \$50,000 for every foreclosure. So it would seem to me that the avoidance of foreclosure is a good thing for everyone involved: the homeowner, other people who own property in the neighborhood, as well as the bank. Yet it turns out that when we turn to the banks and say: So do something about it voluntarily, their response to it is meager and disappointing.

The Treasury Department said on Tuesday that only a small number of homeowners—235,247, or 9 percent of those eligible—had been helped by the latest government program created to modify home loans and prevent foreclosures. A report released by Treasury officials identified lenders who had made slow progress in offering more affordable mortgages, naming Bank of America and Wells Fargo as among those failing to reach large numbers of eligible borrowers. While 15 percent of eligible homeowners have been offered help through the mortgage modification program, the low rate of actual mortgage reductions has frustrated administration officials.

In a hearing two weeks ago in the Senate Judiciary Committee, we heard testimony from the National Consumer Law Center that I found troubling. Housing counselors from all over the country have told stories of violations of the Administration plan by the servicers. Homeowners have been asked to pay fees to apply for a trial modification and to waive their legal rights. Servicers have told homeowners that homeowners need to skip payments to become eligible, which puts them even farther behind. Servicers have refused to offer eligible homeowners a modification, and have offered modifications that do not comply with the program guidelines—and that is for the homeowners lucky enough to get someone at the servicers' call centers to answer the phone. Worst of all, servicers continue to pursue foreclosures even as they are supposedly working with homeowners on a mortgage modification.

This has to end. Whether the bankers and mortgage servicers are failing because of intransigence or incompetence doesn't matter. Our economy is hanging in the balance. They have to do much better.

The Times article goes on to note that some banks have done better than others. Where Bank of America has modified only 4 percent of eligible mortgages and Wells Fargo, 6 percent, CitiMortgage, a unit of Citigroup, fared better at 15 percent, and JPMorgan Chase is among the most successful, modifying loans for 20 percent of eligible borrowers.

In the previous administration, the Secretary of the Treasury, Hank Paulson, called me and told me what they were going to do to try to rescue the banks.

I said: Hank, you have to get to the heart of this. It is the foreclosure crisis. What are you going to do about the people losing their homes?

He said that they were not going to do anything except a voluntary program.

The voluntary program of the Bush administration didn't work and now the voluntary program of this administration is not working. There are not enough people who are facing foreclosure who realistically have an option of renegotiating the terms of their mortgages.

I credit President Bush and President Obama with offering the opportunity to lead to the industry. Frankly, they have failed. A few of these banks have done reasonably well, if you consider 20 percent of those eligible being offered mortgage modification something to brag about, but others are terrible.

So yesterday I along with Senator REED and Senator WHITEHOUSE sent a letter to the heads of the 38 banks and mortgage service companies that have signed up for the Administration's Home Affordable Modification Program. We are asking them a series of pointed questions that will help us understand what each servicer is doing to help homeowners avoid preventable foreclosures.

Most importantly, I am asking the servicers to make a commitment that they will avoid scheduling a foreclosure on any homeowner who is actively working in good faith to work out a loan modification that is fair, reasonable, and sustainable.

Let me mention one other element that should be noted here. Two weeks ago in Chicago, a group known as NACA—I believe that stands for the Neighborhood Assistance Corporation of America—held an opportunity at McCormick Place for those facing foreclosure to come in and try to work out new mortgage terms. I was at another meeting, they invited me to come over, and I was stunned as I walked into this huge hall filled with literally thousands of people on a Saturday morning, thousands of people facing mortgage foreclosure. On one side of the room sat a large group, about 1,000 people, and they were from Hispanic families; on the other side of the room, another 1,000 people, by and large African American, with others—Asians, Whites, and others, but primarily African American.

It is clear to me, as you look at the nature of the foreclosure crisis, that many people in lower income and middle-income categories, particularly those who have been the targets of predators in the past, who were preyed upon with these mortgages and now face foreclosure, are also people who are most likely to lose their jobs. They are in marginal employment, and a slowing economy is going to hurt them first, which goes to my point: Not enough is being done. For those who are still working and have a chance to pay on their mortgage, these banks should be stepping up, showing a lot more commitment to renegotiating the terms of their mortgage than they currently are.

When I offered this change in the Bankruptcy Code to try to move this process forward, the banking associations—all of them—opposed it. Only one bank, Citigroup, supported my efforts.

In fact, an interesting thing is that at one point in the negotiations, we said to the independent community bankers, the hometown bankers we all know: We will exempt you. Because you have such a small part of this problem portfolio, we will exempt you and just go after the large banks that are responsible for this.

The so-called independent community banks said: No, we don't want any part of it. We are going to stick with our friends, the large banks.

That leads me to conclude that the independent community banks should drop the word "independent" from their title. They are now part of the larger bank operation when it comes to dealing with this foreclosure crisis.

Much the same can be said for credit unions. Given an opportunity to avoid being even part of this change in bankruptcy modifications, they refused to support us as well.

So the entire financial industry has stood back and said: We are not going to support—with the exception of Citigroup—any change in the Bankruptcy Code, and quite honestly, we are not going to do much when it comes to renegotiating the mortgages.

I don't think this economy is going to get well until we deal with this issue. I can take you to neighborhoods in Chicago and surrounding communities and tell you that they are flat on their backs because of mortgage foreclosures. It is very difficult, if not impossible, for these communities to come back, these neighborhoods to come back.

There are things we need to do.

First, Congress should consider passing legislation to give homeowners who can't afford their mortgage payments the right to remain in their homes for a period of time by paying fair market rent to a bank. Why not let a family stay in a home rather than let it get run down and become a haven for criminal activities and other things when it is vacant? It is certainly no good assignment for a bank to be told: You now have a foreclosed home, cut the grass and take care of the weeds and put plywood on the windows and try to keep the bad guys out. That is what most of them face.

Second, Congress should consider providing matching funds for cities and States to create mandatory arbitration programs. They have done it in Philadelphia with some success; we ought to do it here and across the Nation so that we move this toward arbitration, negotiation, and agreements for new modifications on mortgages.

Third, if these servicers of mortgages, some of which have taken billions of dollars in taxpayer bailouts, refuse to meet the foreclosure reduction standards and goals they have

signed up for under this administration, they should be facing penalties. We gave them taxpayers' money to save the banks. Some of them used it for bonuses for their employees, and now they won't turn around and give a helping hand to people who are about to lose their homes? I am sorry, but if there is any justice in America, that has to change.

Will I come back with bankruptcy modification? Well, let's see what happens in the next few months. I want to be able to come to my colleagues in the next 2 or 3 months and say: Alright, whether you support or oppose bankruptcy changes, when it comes to these mortgage modifications, let's be honest about where we are today and where we need to go. That is absolutely essential.

So I hope this situation starts to resolve itself. I hope some of these banks that hold these mortgages get serious about helping people facing foreclosure. It is the only way we are going to stabilize this economy and get it moving forward.

I might add, the blip in the housing market we saw just a few weeks ago is likely just that. There had been a temporary moratorium on many mortgage foreclosures, leading many people to believe there was a turnaround in the housing industry. But a new wave of mortgage resets is coming. This time it's the so-called "option ARMs" or "pick-a-payment" adjustable rate mortgages.

These are the ultimate exploding mortgages. They gave homebuyers the option of not even covering the interest some months, but after two or three years, the monthly mortgage payment can skyrocket, often by 50 percent or more. An estimated 2.8 million option ARMs are scheduled to reset over the next 2½ years.

So I am looking for a turnaround in the housing industry. I don't think we have quite seen it yet. I hope it comes soon.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### EXECUTIVE SESSION

#### NOMINATION OF SONIA SOTOMAYOR TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Sonia Sotomayor, of New York, to be an Associate Justice of the Supreme Court of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 2 p.m. will be equally divided in 1-hour alternating blocks of time, with the majority controlling the first hour.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, we began debate yesterday on this historic nomination of Judge Sonia Sotomayor to the Supreme Court. Senator REID, Senator FEINSTEIN, Senator MENENDEZ, Senator WHITEHOUSE, and Senator BROWN gave powerful statements—powerful statements—in support of Judge Sotomayor's long record, a record that makes her a highly qualified nominee and a record that brought about her receiving the highest qualification possible from the American Bar Association. I thank those Senators for their statements.

In the course of my opening statement yesterday, I spoke about the value of real-world judging. Among the cases I discussed were two involving the strip searches of adolescent girls. I spoke about how Judge Sotomayor and Justice Ginsburg properly—properly—approached those decisions in their respective courts.

Judge Sotomayor is certainly not the first nominee to discuss how her background has shaped her character. Many recent Justices have spoken of their life experiences as an influential factor in how they approach cases. Justice Alito, at his confirmation hearings, described his experience as growing up as a child of Italian immigrants saying:

When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender. And I do take that into account.

He was praised by every single Republican in the Senate for that.

Chief Justice Roberts testified at his confirmation hearing:

Of course, we all bring our life experiences to the bench.

Again, every single Republican voted for him.

Justice O'Connor echoed these statements when she said recently:

We're all creatures of our upbringing. We bring whatever we are as people to a job like the Supreme Court. We have our life experiences . . . So that made me a little more

pragmatic than some other justices. I liked to find solutions that would work.

Justice O'Connor explained recently:

You do have to have an understanding of how some rule you make will apply to people in the real world. I think that there should be an awareness of the real-world consequences of the principles of the law you apply.

Just as all Democrats voted for Justice O'Connor, so did all Republicans.

I recall another Supreme Court nominee who spoke during his confirmation hearing of his personal struggle to overcome obstacles. He made a point of describing his life as:

One that required me to at some point touch on virtually every aspect, every level of our country, from people who couldn't read or write to people who were extremely literate, from people who had no money to people who were very wealthy.

And added:

So what I bring to this Court, I believe, is an understanding and the ability to stand in the shoes of other people across a broad spectrum of this country.

That is the definition of empathy. That nominee, of course, was Clarence Thomas. Indeed, when President George H.W. Bush nominated Justice Thomas to the Supreme Court, he touted him as:

A delightful and warm, intelligent person who has great empathy and a wonderful sense of humor.

Let me cite one example of a decision by Justice Thomas that I expect was informed by his experience. In *Virginia v. Black*, the Supreme Court, in 2003, held that Virginia's statute against cross burning, done with an attempt to intimidate, was constitutional. However, at the same time, the Court's decision also rejected another provision in that statute. Justice Thomas wrote a heartfelt opinion, where he stated he would have gone even further.

He began his opinion:

In every culture, certain things acquire meaning well beyond what outsiders can comprehend. That goes for both the sacred . . . and the profane. I believe that cross burning is the paradigmatic example of the latter.

He went on to describe the Ku Klux Klan as a "terrorist organization," while discussing the history of cross burning, particularly in Virginia, and the brutalization of racial minorities and others through terror and lawlessness. Would anyone deny Justice Thomas his standing or seek to belittle his perspective on these matters? I trust not. Who would call him biased or attack him as Judge Sotomayor is now being attacked? I trust no one would. Real-world experience, real-world judging, and awareness of the real-world consequences of decisions are vital aspects of the law. Here we have a nominee who has had more experience as a Federal judge than any nominee in decades and will be the only member of the U.S. Supreme Court with experience as a trial judge.

I look forward to this debate. One of the Judiciary Committee's newest members is now on the floor, Senator

KLOBUCHAR, the senior Senator from Minnesota. She has been a leader in support of this nomination. I see beside her the former Governor of my neighboring State of New Hampshire, then-Governor Shaheen, now Senator SHAHEEN. Both of them are going to speak, so I will take no more time.

I yield the floor, first, to Senator KLOBUCHAR.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I thank the chairman. I thank him for those strong remarks on behalf of Judge Sotomayor, strong remarks for a very strong nominee.

More importantly, as chairman of the Senate Judiciary Committee, I thank Senator LEAHY, and Senator SESSIONS, for the way they conducted the confirmation hearing, the dignity that was shown to the nominee in that hearing. I think that was very important to the process. We may not have agreed with the conclusions that some of our colleagues reached, but no one can dispute the hearing was conducted civilly and with great dignity. This is a nominee who shows great dignity every step of the way.

Today I will be speaking in support of Judge Sotomayor's nomination, but first I am going to be joined by several of my esteemed fellow women Senators, including Senator SHAHEEN of New Hampshire, who is here already, Senator STABENOW of Michigan, Senator GILLIBRAND of New York, and Senator MURRAY of Washington State.

We all know this nomination is history making for several reasons but one of them, of course, is that Judge Sotomayor will be only the third woman ever to join the Supreme Court of the United States of America.

We know she is incredibly well qualified. She has more Federal judicial experience than any nominee for the past 100 years. That is something that is remarkable. But I do think it is worth remembering what it was like to be a nominee for this Court as a woman even just a few years ago.

It is worth remembering, for example, that when Justice O'Connor graduated from law school, the only offers she got from law firms, after graduating from Stanford Law School, was for legal secretary positions. Justice O'Connor, who graduated third in her class in law school, saw her accomplishments reduced to one question: Can she type?

Justice Ginsburg faced similar obstacles. When she entered Harvard Law School, she was 1 of only 9 women in a class of more than 500. The dean of the law school actually demanded she justify why she deserved a seat that could have gone to a man. Later, she was passed over for a prestigious clerkship, despite her impressive credentials.

Nonetheless, both of these women persevered and they certainly prevailed. Their undeniable merits triumphed over those who sought to deny

them opportunity. The women who came before Judge Sotomayor—all those women judges—helped blaze a trail. Although Judge Sotomayor's record stands on her own, she is also standing on those women's shoulders.

I am pleased to recognize several women Senators who are here today to speak in support of Judge Sotomayor. The first is my great colleague from New Hampshire, Senator SHAHEEN.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Mr. President, I am delighted to be here to join the senior Senator from Minnesota, Ms. KLOBUCHAR, and to speak also after the senior Senator from Vermont, my neighbor, Senator LEAHY, in support of Sonia Sotomayor.

This week, we have the opportunity to make history by confirming the first Hispanic and only the third woman to the U.S. Supreme Court. Senator KLOBUCHAR spoke eloquently about the challenges women have faced, and I am pleased to say I had the honor as Governor of appointing the first woman to the New Hampshire Supreme Court.

I come to the floor to speak in support of Sonia Sotomayor's nomination; however, not because of the historic nature of that nomination but because she is more than qualified to sit on the Supreme Court. I am somewhat perplexed by why the vote on her nomination will not be unanimous.

Judge Sotomayor is immensely qualified. The nonpartisan American Bar Association Standing Committee on the Federal Judiciary, which has evaluated the professional qualifications of nominees to the Federal bench since 1948, unanimously—unanimously—rated Judge Sotomayor as "well qualified" to be a Supreme Court Justice after carefully considering her integrity, professional competence, and judicial temperament.

Her decisions as a member of the Second Circuit Court of Appeals are well within the judicial mainstream of our country. A Congressional Research Service analysis on her opinions concluded she eludes easy ideological categorization and demonstrates an adherence to judicial precedent, an emphasis on facts to a case, and an avoidance of overstepping the circuit court's judicial role. Described as a political centrist by the nonpartisan American Bar Association Journal, she has been nominated to the Federal courts by Presidents of both political parties.

When President George H.W. Bush, in 1992, nominated Sonia Sotomayor to the U.S. District Court for the Southern District of New York, this Senate approved her nomination by unanimous consent. When President Clinton, in 1998, nominated her to the Second Circuit Court of Appeals, this Senate voted 67 to 29 to confirm her on an overwhelmingly bipartisan vote.

Her now-familiar personal story is no less impressive. The confirmation of Judge Sonia Sotomayor to the highest

Court of our country will inspire girls and young women everywhere to work hard and to set their dreams high.

Americans look to lawmakers to work together to make the country stronger. They expect us to put partisanship aside to advance the interests of the American people. If there is one issue we should be able to come together on, to put aside our differences on, it is the confirmation of Judge Sonia Sotomayor to the U.S. Supreme Court.

I look forward to having the opportunity to vote in support of her confirmation with the majority of my colleagues.

I thank Senator KLOBUCHAR. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, having looked at Judge Sotomayor's whole record, as Senator SHAHEEN has pointed out, her 17 years on the bench and the fairness and integrity she will bring to the job, I am proud to support her nomination.

When Judge Sotomayor's nomination was first announced, I was impressed by her life story, as was everyone else, which all of us know well by now. She grew up, in her own words, "in modest and challenging circumstances," and she worked hard for everything she got.

Her dad died when she was 9 years old, and her mom supported her and her brother. One of my favorite images, as a member of the Judiciary Committee, from the hearing was her mother sitting behind her every moment of that hearing, never leaving her side, the mother who raised her on a nurse's salary, who saved every penny she had to buy an Encyclopedia Britannica for her family. That struck me because I know in our family we also had a set of Encyclopedia Britannica that had a hallowed place in our hallway, and that is what I used to write all my reports.

Judge Sotomayor went on to graduate from Princeton summa cum laude and Phi Beta Kappa before graduating from Yale Law School.

Since law school, she has had a varied and interesting legal career. She has worked as a private civil litigator, she has been a district court and an appellate court judge, and she has taught law school classes.

But one experience of hers, in particular, resonates with me. Immediately after graduating from law school, she spent 5 years as a prosecutor at the Manhattan District Attorney's Office.

I want to talk a little about that because it is something she and I have in common. I was a prosecutor myself, Mr. President. You know what that is like, to have that duty. I was a prosecutor for Minnesota's largest county. As a prosecutor, after you have interacted with victims of crime, after you have seen the damage that crime does to individuals and to our commu-

nities, after you have seen defendants who are going to prison and you know their families are losing them, sometimes forever, you know the law is not just an abstract subject. It is not just a dusty book in the basement. The law has a real impact on the real lives of real people.

It also has a big impact on the individual prosecutor. No matter how many years may pass, you never forget some of the very difficult cases. For Judge Sotomayor, we know this includes the case of the serial burglar turned killer—the Tarzan murderer. For me, there was always the case of Tyesha Edwards, an 11-year-old girl with an unforgettable smile, who was at home doing her homework when a stray bullet from a gang shooting went through the window and killed her.

As a prosecutor, you don't have to just know the law, you have to know the people, the families, and you have to know human nature.

Judge Sotomayor's former supervisor said she is "an imposing and commanding figure in the courtroom, who could weave together a complex set of facts, enforce the law, and never lose sight of whom she was fighting for."

As her old boss, Manhattan District Attorney Robert Morgenthau said: She is a "fearless and effective" prosecutor.

Mr. President, before I turn this over to my colleague, the Senator from Michigan, who has just arrived, I thought it would be interesting for people to hear a little more about Judge Sotomayor's experience as a prosecutor, so you can hear firsthand from her own colleagues.

This was a letter that was sent in from dozens of her colleagues who actually worked with her when she was a prosecutor. They were not her bosses necessarily but her colleagues who worked with her. This is what they said in the letter.

We served together during some of the most difficult years in our city's history. Crime was soaring, a general sense of disorder prevailed in the streets, and the popular attitude was increasing violence was inevitable. Sonia Sotomayor began as a "rookie" in 1979, working long hours prosecuting an enormous caseload of misdemeanors before judges managing overwhelming dockets. Sonia so distinguished herself in this challenging assignment, that she was among the very first in her starting class to be selected to handle felonies. She prosecuted a wide variety of felony cases, including serving as co-counsel at a notorious murder trial. She developed a specialty in the investigation and prosecution of child pornography cases. Throughout all of this, she impressed us as one who was singularly determined in fighting crime and violence. For Sonia, service as a prosecutor was a way to bring order to the streets of a city she dearly loves.

Her colleagues go on in this letter:

We are proud to have served with Sonia Sotomayor. She solemnly adheres to the rule of law and believes that it should be applied equally and fairly to all Americans. As a group, we have different world views and political affiliations, but our support for Sonia is entirely nonpartisan. And the fact that so many of us have remained friends with Sonia over three decades speaks well, we think, of her warmth and collegiality.

Mr. President, I see that my colleague from Michigan has arrived. I will continue my statement when she has completed hers, but I am proud to have Senator STABENOW, the Senator from Michigan, here to speak on behalf of Judge Sotomayor, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, first I am so pleased to be here with the senior Senator from Minnesota, and I have appreciated her wonderful words about Judge Sotomayor, as well as her advocacy on behalf of Minnesota. We have a lot in common, Minnesota and Michigan, and so it is always a pleasure to be with the Senator from Minnesota.

I rise today to strongly support the confirmation of Judge Sonia Sotomayor as the next Justice of the Supreme Court. Over 230 years ago, Alexander Hamilton called experience "that best oracle of wisdom." His words continue to ring true today. Judge Sotomayor has over 17 years of experience on the Federal bench. She will be the most experienced Supreme Court Justice in over 100 years—a lifetime.

But it isn't just her years of experience that will make her a great Justice. It will be the experience of a uniquely American life—the American dream. She was raised in a South Bronx housing project where her family instilled in her values of hard work and sacrifice. At the age of 9, her father—a tool-and-die worker—died tragically. After that, her mother—a nurse—raised her the best she could. I would say she did a pretty good job.

Her mom urged her to pay attention in school. She pushed Sonia to work hard and to get good grades, which she did. She studied hard and graduated at the top of her class in high school. It was through education that doors opened for Judge Sotomayor, as they have opened for millions of other Americans.

After law school, she went to work as an assistant district attorney in New York, prosecuting crimes such as murders and robberies and child abuse. She later went into private practice as a civil litigator, working in parts of the law related to real estate, employment, banking, and contract law.

In 1992, she was nominated by President George H.W. Bush and confirmed by the Senate unanimously to serve as a district court judge. She performed admirably, and President Clinton—having been nominated first by a Republican and then again by a Democrat—elevated her to the Second Circuit Court of Appeals.

It is in part due to this enormous breadth of experience as a prosecutor, a lawyer in private practice, as a trial judge, and as an appeals court judge that the American Bar Association has given her their highest rating of "well qualified."

Judge Sotomayor's story is the American story—that a young person



born into poverty can work hard, take advantage of opportunities, and then succeed brilliantly and rise to the very top of their profession. Judge Sotomayor is really an inspiration to all of us. She is a role model for millions of young people of every race, class, creed, and background living in America today.

Last November, we demonstrated that every child in America really can grow up to be President of the United States. Judge Sotomayor proves that with hard work and dedication they can be a Supreme Court Justice too.

Mr. President, I strongly urge my colleagues to vote to confirm Judge Sotomayor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from Michigan for her strong words in favor of this very strong nominee.

I was talking earlier about the experience that Judge Sotomayor brings to the bench as a prosecutor. For me, it means she meets one of my criteria for a nominee because I am looking for someone who deeply appreciates the power and the impact that laws and the criminal justice system have on real people's lives. From her first day in the Manhattan DA's office, Judge Sotomayor talked about and understood how it was important to view the law as about people and not just the law.

But when you talk about people, it means you have to look at their cases, it means you have to look at the law, and you have to look at the facts. One of the things we learned in the hearings was that sometimes Judge Sotomayor had to make very difficult decisions. When she was a prosecutor, she had to turn down some cases. Although she was, by all accounts, more aggressive than other prosecutors and took on cases many wouldn't, when she was a judge she sometimes had to turn down cases, turn away victims, as in the case involving the crash of the TWA flight. She actually disagreed with a number of other judges and said as much as she found the victims' families and their case to be incredibly sympathetic, the law took her somewhere else; that the facts and the law meant something else.

You could see that in a number of her cases, which is part of the reason people who have looked at her record don't think of her as a judicial activist. They think of her as a judicial model—someone who, in her own words, has a fidelity to the law.

What are we looking for in a Supreme Court Justice? Well, I think actually one of Sonia Sotomayor's old bosses, Robert Morgenthau, said it best. He came and testified on her behalf, and he quoted himself from many years ago when speaking about what he was looking for when he tried to find prosecutors for his office. He said:

We want people with good judgment, because a lot of the job of a prosecutor is mak-

ing decisions. I also want to see some signs of humility in anybody that I hire. We're giving young lawyers a lot of power, and we want to make sure that they're going to use that power with good sense and without arrogance.

These are among the very same qualities I look for in a Supreme Court Justice. I, too, am looking for a person with good judgment, someone with intellectual curiosity and independence but who also understands that her decisions affect the people before her.

With that, I think comes a second essential quality—the quality of humility. I am looking for a Justice who appreciates the awesome responsibility they will be given if confirmed, a Justice who understands the gravity of the office and who respects the very different roles the Constitution provides for each of the three branches of government—something Judge Sotomayor was questioned on extensively in the hearing and made very clear she respects those three different roles for the three different branches of government.

Finally, a good prosecutor knows their job is to enforce the law without fear or favor. Likewise, a Supreme Court Justice must interpret the laws without fear or favor. I am convinced that Judge Sotomayor meets all of these criteria.

She has been a judge for 17 years, 11 years as an appellate judge and 6 years as a trial judge. President George H.W. Bush gave her the first job she had as a Federal judge in the Southern District of New York. Her nomination to the Southern District was enthusiastically supported by both New York Senators—Democratic Senator Daniel Patrick Moynihan and Republican Senator Alfonse D'Amato. So she was first nominated by George H.W. Bush, supported by a Republican Senator, and as Senator SHAHEEN noted, confirmed unanimously by this Senate.

Judge Sotomayor, as I noted before, has more Federal judicial experience than any nominee in the past 100 years. I think the best way to tell what kind of a Justice she will be is to look at what kind of a judge she has been. One person who knows a little something about Sonia Sotomayor as a judge is Louie Freeh, the former Director of the FBI, who served as a judge with her before he was the Director of the FBI. He actually came—again, a Republican appointee—and testified for her at her hearing. He didn't just testify based on a review of her record, he testified based on his own personal experience. He was actually her mentor when she arrived as a new judge. I want to read from the letter he submitted to the Judiciary Committee.

Louis Freeh writes:

It is with tremendous pride in a former colleague that I write to recommend wholeheartedly that you confirm Sonia Sotomayor to be an Associate Justice of the Supreme Court. Judge Sotomayor has the extensive experience and the judicial qualities that make her eminently qualified for this ultimate honor and I look forward to watching

her take her place on the Nation's highest court.

Freeh goes on to say:

I first met Judge Sotomayor in 1992 when she was appointed to the United States District Court for the Southern District of New York. As the newest judge in the storied Courthouse at Foley Square in lower Manhattan, we followed the tradition of having the newly-minted judge mentored by the last arriving member of the bench. Despite the questionable wisdom of this practice, I had the privilege of serving as Judge Sotomayor's point of contact for orientation and to help her get underway as she took on a full, complex civil and criminal case docket.

Into this very pressurized and unforgiving environment, where a new judge's every word, decision, writing and question is scrutinized and critiqued by one of the harshest, professional audiences imaginable, Judge Sotomayor quickly distinguished herself as a highly competent judge who was open-minded, well-prepared, properly demanding of the lawyers who came before her, fair, honest, diligent in following the law, and with that rare and invaluable combination of legal intellect and "street smarts."

Louis Freeh, a Republican-appointed judge, goes on to say:

To me, there is no better measure by which to evaluate a judge than the standards of the former Chief Judge of the U.S. District Court of Minnesota—

Mr. President, I like this part—  
—and nationally renowned American jurist, Edward J. Devitt. A former Member of Congress and World War II Navy hero, Judge Devitt was appointed to the federal bench by President Eisenhower and became one of the country's leading trial judges and teacher of judges. A standard Jury Instruction textbook (Devitt and Blackmun) as well as the profession's most coveted award recognizing outstanding judges, the Devitt Award, bears his name.

I recently had the honor of participating in the dedication of a courtroom named for Judge Devitt. The judges and lawyers who spoke in tribute to Judge Devitt very ably and insightfully described the critical characteristics which define and predict great judges. But rather than discuss Judge Devitt's many decisions, particular rulings or the "sound bite" analyses which could have been parsed from the thousands of complex and fact specific cases which crossed his docket, they focused on those ultimately more profound and priceless judicial qualities.

He goes on to talk about those qualities of a good judge.

1. Judging takes more than mere intelligence;
2. Always take the bench prepared. . . .
3. Call them as you see them.

He then goes on to say:

Sonia Sotomayor would have gotten an "A plus" from the "Judge from Central Casting," as Judge Devitt was often called by his peers.

I think that says it all. You have Louis Freeh here testifying in behalf of Judge Sotomayor. As I read earlier, you have dozens of her former colleagues, Republicans, Democrats, Independents, writing about what kind of prosecutor she was. Every step of the way she impressed people.

I see we are now being joined by the Senator from New York, my distinguished colleague, who also will be speaking in favor of Judge Sotomayor.

Senator GILLIBRAND had the distinguished honor to introduce Judge Sotomayor when she so eloquently spoke at the hearing. I am very honored to have her join us here today.

I will turn this over to Senator GILLIBRAND.

Mrs. GILLIBRAND. Mr. President, I am grateful to the senior Senator from Minnesota for her kind words and thank her for her extraordinary advocacy on behalf of Judge Sonia Sotomayor. The Senator's words and real belief in her contribution is extremely important.

I thank the Senator.

I stand today to speak on behalf of Judge Sonia Sotomayor and lend my strong support to her nomination to the U.S. Supreme Court.

Judge Sotomayor will bring the wisdom of all her experiences to bear as she applies the rule of law, and will grace the Supreme Court with the intelligence, judgment, clarity of thought and determination of purpose that we have come to expect from all great Justices on the Court.

Much has been made of Judge Sotomayor's remarkable personal story. There has been great import afforded to the characterization of a "wise Latina." Clearly, the life lessons and experiences of Justices inform their decisions as has been noted during the confirmation process time and time again.

Justice Antonin Scalia discussed his being a racial minority, in his understanding of discrimination. Justice Clarence Thomas indicated that his exposure to all facets of society gave him the "ability to stand in the shoes of other people across a broad spectrum of this country."

Justice Samuel Alito described his parents growing up in poverty as a learning experience and his family's immigration to the United States as influencing his views on immigration and discrimination.

As Americans, we honor the diversity of our society. As our esteemed jurists have noted, the construct of the court is shaped by the diverse experiences and viewpoints of each of its Justices. However, Sonia Sotomayor's ethnicity or gender alone does not indicate what sort of Supreme Court Justice she will be. Rather, it is Judge Sotomayor's experience and record that more fully informs us.

The breadth and depth of Judge Sotomayor's experience makes her uniquely qualified for the Supreme Court. Her keen understanding of case law and the importance of precedent is derived from working in nearly every aspect of our legal system—as a prosecutor, corporate litigator, civil rights advocate, trial judge and appellate judge. With confirmation, Judge Sotomayor would bring to the Supreme Court more Federal judicial experience than any justice in 100 years and more overall judicial and more overall judicial experience than any justice in 70 years.

As a prosecutor, Judge Sotomayor fought the worst of society's ills—from murder to child pornography to drug trafficking. Judge Sotomayor's years as a corporate litigator exposed her to all facets of commercial law including, real estate, employment, banking, contracts and agency law. Her pro bono work on behalf of the Puerto Rican Legal Defense Fund demonstrates her commitment to our constitutional rights and the core value that equality is an inalienable American right.

On the U.S. District Court for the Southern District of New York, Judge Sotomayor presided over roughly 450 cases, earning a reputation as a tough, fair and thoughtful jurist.

As an appellate judge, Sonia Sotomayor has participated in over 3,000 panel decisions and authored roughly 400 published opinions. As evidence of the integrity of her decisions and adherence to precedence, only 7 cases were brought up for review by the Supreme Court, of reversing only 3 of her authored opinions, 2 of which were closely divided.

In an analysis of her record, done by the Brennan Center for Justice, the numbers overwhelmingly indicate that Judge Sotomayor is solidly in the mainstream of the Second Circuit.

Judge Sotomayor has been in agreement with her colleagues more often than most—94 percent of her constitutional decisions have been unanimous.

She has voted with the majority in over 98 percent of constitutional cases.

When Judge Sotomayor has voted to hold a challenged governmental action unconstitutional, her decisions have been unanimous over 90 percent of the time.

Republican appointees have agreed with her decision to hold a challenged governmental action unconstitutional in nearly 90 percent of cases.

When she has voted to overrule a lower court or agency, her decisions have been unanimous over 93 percent of the time.

Republican appointees have agreed with Judge Sotomayor's decision to overrule a lower court decision in over 94 percent of cases.

Judge Sotomayor's record is a testament to her strict adherence to precedence—her unyielding belief in the rule of law and the Constitution. I strongly support Judge Sotomayor's nomination and firmly believe she will prove to be one of the finest justices in American history. I urge my fellow Senators to join me in voting for her confirmation.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from New York for her fine remarks. As she was talking, I was realizing she is a pioneer of sorts, being the first woman Senator from New York who took over as Senator having two very small children. I have seen them and they are small—babies—and she has been able to manage and do a fine job in her role of Senator while

being a pioneer as a mother at the same time in the State of New York.

With that, it is a good segue to introduce my colleague from the State of Washington, PATTY MURRAY, one of the first women to serve in the Senate. I love her story because when Patty started running for office she was working on some school issues and she went to the legislature. One of the elected legislators actually said to her: How do you think you are ever going to get this done? You are nothing but a mom in tennis shoes.

She went on to wear those tennis shoes and wear them right to the floor of the Senate. I am proud to introduce to speak on behalf of Judge Sotomayor my colleague from the State of Washington, PATTY MURRAY.

Mrs. MURRAY. I thank the senior Senator from Minnesota for all her work helping to move this very critical and important nomination through the Senate. I am here to join her in support of the nomination of Judge Sonia Sotomayor to the U.S. States Supreme Court.

The U.S. Supreme Court is the final arbiter of many of our nation's most important disputes.

And as the Constitution provides for a lifetime appointment to the Court, a Supreme Court Justice has an opportunity to have a profound effect on the future of the law in America. That is why the Constitution directs that the Senate is responsible for providing advice and consent on judicial nominees.

Naturally, I take my responsibilities in the nomination and confirmation process very seriously.

But I take a special, personal interest in Supreme Court nominations.

It was watching Supreme Court confirmation hearings many years ago that inspired me to challenge the status quo and run for the Senate.

I was deeply frustrated by the confirmation hearings of then-nominee Clarence Thomas. I believed that average Americans did not have a voice in the process.

There were important questions—questions that needed to be answered—that were never even raised to the nominee.

So, I have worked for years to be a voice for those average Americans when it comes to judicial appointments—and make sure those questions are asked.

I have had the opportunity to meet in person with Judge Sotomayor and ask her the questions that will most affect all Americans, including working families in Washington State.

I have examined her personal and professional history, and studied her 17-year record on the Federal bench.

I have followed her progress through the Senate Judiciary Committee and watched her answer a number of difficult questions.

And with all of this information and her answers in mind, I am pleased to support her nomination.

By now, many Americans have heard the remarkable life story of Judge



Sonia Sotomayor. Judge Sotomayor is truly the embodiment of the American dream.

Though many Americans by now have heard Judge Sotomayor's story, some points bear repeating.

Judge Sotomayor is the daughter of Puerto Rican parents. Her father died when she was 9, and she and her brother were raised by her mother in a public housing project in the Bronx.

Sotomayor's mother, a nurse, worked extra hours so that she could pay for schooling and a set of encyclopedias for her children.

After graduating from high school, Judge Sotomayor attended college at Princeton and law school at Yale.

She spent five years prosecuting criminal cases in New York, 7 years in private law practice, and 17 years as a Federal judge on the U.S. District Court and Court of Appeals.

Judge Sotomayor's story is an inspiring reminder of what is achievable with hard work and the support of family and community.

Of course, a compelling personal story of triumph in tough circumstances is not itself enough.

I have long used several criteria to evaluate nominees for judicial appointments: Are they ethical, honest, and qualified? Will they be fair, independent, and even-handed in administering justice? And will they protect the rights and liberties of all Americans?

I am confident that Judge Sotomayor meets these criteria.

She has 17 years of Federal judicial experience and unanimously received the highest rating of the American Bar Association—which called her “well qualified” based on a comprehensive evaluation of her record and integrity.

And she has directly answered questions about her personal beliefs—and prior statements.

She has been clear with me, the Judiciary Committee and the American people that her own biases and personal opinions never play a role in deciding cases. More importantly, her 17 years on the bench stand as the testament to this fact.

Judge Sotomayor has demonstrated her independence. She was nominated to the Federal district court by President George H.W. Bush and appointed to the U.S. court of appeals by President Clinton.

Judge Sotomayor has received rave reviews from her fellow judges on the Second Circuit, both Republicans and Democrats, as well as strong support from a diverse cross section of people and organizations from across the political spectrum.

Finally, it is clear to me that Judge Sotomayor is committed to protecting the rights and liberties of all Americans. She understands the struggle of working families. She understands the importance of civil rights. Her record shows a strong respect for the rule of law and that she evaluates each case based on its particular facts.

Having followed the criteria by which I measure judicial nominees, I am confident Judge Sotomayor will be a smart, fair, impartial, and qualified member of the U.S. Supreme Court.

I believe any individual or group from my home State could stand before her and receive fair treatment and that she will well serve the interests of justice and the public as our next Supreme Court Justice.

I wish to come to the floor to join with many of my women colleagues in the Senate and let the people of Washington State know that, after reviewing her qualifications and her record and reviewing her testimony, I am very proud to stand and support this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. I wish to first thank the Senator from Washington for her excellent remarks on Judge Sotomayor.

During this hour, we have heard from several of my colleagues, all strongly supporting Judge Sotomayor. I have talked about, first of all, her growing up and her difficult circumstances. I spoke about her work as a prosecutor and the support she has received from her prosecutorial colleagues.

I have talked about her work as a judge and read extensively from a letter from Louis Freeh, the former Director of the FBI and former Federal judge, about her work as a judge. Now, in the final part of my talk, I wish to address some of the other issues that have been raised with respect to Judge Sotomayor.

I have to say, I woke up this morning to the radio on my clock radio and heard one of my colleagues who decided he was not going to support her, in his words, because of the “empathy standard.”

I kind of put the pillow over my head. I thought: He must not have been sitting in the hearing because she was specifically asked by one of the other Senators about how she views the cases. They specifically asked her if she agreed with President Obama when he said: You should use your heart as well as the law.

She said: Actually, I do not agree with that. I look at the law and I look at the facts.

So people can say all kinds of things about her, if they would like, but I suggest they look at her record.

My colleagues in the Senate are entitled to oppose her nomination, if they wish; that is their prerogative. But I am concerned some people keep returning again and again to some quotes in the speeches, a quote she actually said, a phrase, that she did not mean to offend anyone and she should have put it differently.

When have you 17 years of a record as a judge, what is more important—those 17 years of the record of a judge or one phrase which she basically said was not the words she meant to use. What is more important?

In the words of Senator Moynihan: You are entitled to your own opinion, but you are not entitled to your own facts. So let's look at the facts of her judicial record. This nominee was repeatedly questioned, and I sat there through nearly all of it. She was questioned for hours and days about whether she would let bias or prejudice infect her judgment.

But, again, the facts do not support these claims. In race discrimination cases, for example, Judge Sotomayor voted against plaintiffs 81 percent of the time. She also handed out longer jail sentences than her colleagues as a district court judge. She sentenced white-collar criminals to at least 6 months in prison 48 percent of the time; whereas, her other colleagues did so only 34 percent of the time.

In drug cases, 85.5 percent of convicted drug offenders received a prison sentence of at least 6 months from Judge Sotomayor, compared with only 79 percent in her colleagues' cases.

A few weeks ago, I was in the Minneapolis airport and a guy came up to me, he was wearing an orange vest. He said: Are you going to vote for that woman?

At first, I did not know what he was talking about. I said: What do you mean?

He said: That judge.

I said: Actually, I want to meet her first. This is before I had met her. I said: I want to ask her some questions before I make a decision.

He said: Oh, I do not know how you are going to do that because she always lets her feelings get in front of the law.

This guy needs to hear these statistics. He needs to hear the statistics Senator GILLIBRAND was talking about, the statistics that when she had served on the bench with a Republican colleague, 95 percent of the time they made the same decision on a case.

So then I guess you must believe that these same Republican-appointed judges are letting their feelings get in front of the law if you take that logic to its extreme. So 95 percent of the time she sided with her Republican-appointed judge colleagues.

During her hearing, Judge Sotomayor was questioned about issues ranging from the death penalty to her use of foreign law. That was repeatedly mentioned that she might use foreign law to decide a death penalty case.

What do we have as the facts? What do we have as evidence? There was one case she decided when the death penalty came before her, and she rejected the claim of someone who wanted to say the death penalty would not apply when she was a district court judge.

She never cited foreign law. There was no mention of France or any kind of law anywhere in that decision. Those are the facts in her judicial record. In no place has she ever cited foreign law to help her interpret a provision of the U.S. Constitution.

I believe that everything in a nominee's professional record is fair game

to consider. After all, we are obligated to determine whether to confirm someone for an incredibly important lifetime position. That is our constitutional duty and I take it seriously.

But that said, when people focus on a few items in a few speeches that Judge Sotomayor has given, phrases which she has basically said she would have said differently if she had another opportunity, you have to ask yourself again: Do those statements—are they outweighed by the record? Are they outweighed by the facts?

Check out all these endorsements of people who have actually looked at her record, have looked at how she has come out on decisions. You have an endorsement from the National District Attorneys Association supporting her; you have the support from the Police Executive Research Forum; you have support from the National Fraternal Order of Police, not exactly a raging liberal organization; you have the support of the National Sheriffs Association. Again, these are the facts.

These are the facts my colleagues should be looking at. You have the support from the International Association of Chiefs of Police. You have the support of the Major Cities Chiefs Association; she has the support of the National Association of Police Organizations; she has the support of the Association of Prosecuting Attorneys; we have letters supporting her from the Detectives Endowment Association; from the National Black Prosecutors Association; from the National Organization of Black Law Enforcement Executives. The list goes on and on and on.

Those are the facts: Unanimous top rating from the ABA, the American Bar Association. Those are the facts. I believe, if we want to know what kind of a Justice Sonia Sotomayor will be, our best evidence is to look at the kind of judge she has been.

I wish to address one more matter that I mentioned at the Judiciary hearing, when we voted for Judge Sotomayor, and that has been a point that irritated me. There have been some stories and comments, mostly anonymous, about Judge Sotomayor's judicial temperament.

According to one newspaper story about this topic, Judge Sotomayor developed a reputation for asking tough questions at oral arguments and for being sometimes brisk and curt with lawyers who were not prepared to answer them. Well, where I come from, asking tough questions, having very little patience for unprepared lawyers is the very definition of being a judge. As a lawyer, you owe it to the bench and to your clients to be as well prepared as you possibly can be.

When Justice Ginsburg was asked about these anonymous comments regarding Judge Sotomayor's temperament recently, she rhetorically asked: Has anybody watched Scalia or Breyer on the bench?

Surely, we have come to a time in this country when we can confirm as

many to-the-point, gruff female judges as we have confirmed to-the-point, gruff male judges. We have come a long way, as you can see from my colleagues who came here during the last hour.

We know that when Sandra Day O'Connor graduated from law school 50-plus years ago, the only offer she got was from a law firm for a position as a legal secretary. Justice Ginsburg faced similar obstacles. We have come a long way.

But I hope my colleagues in this case will also come a long way and look at the record and look at the facts. As I have said, people are entitled to their own opinions, but they are not entitled to their own facts.

In short, I am proud to support Judge Sotomayor's nomination. I believe she will make an excellent Supreme Court Justice. She knows the law, she knows the Constitution, but she knows America too.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BURR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BURR. I ask unanimous consent that the Republican time for the next hour be allocated as follows: 15 minutes to myself, 15 minutes to Senator MARTINEZ, 10 minutes to Senator BOND, and 20 minutes to Senator CORNYN.

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

Mr. BURR. Mr. President, I rise to express my thoughts on the nomination of Judge Sonia Sotomayor to be a U.S. Supreme Court Justice.

Votes on Supreme Court nominees are among the most important cast by a Senator. These nominations warrant a full and in-depth debate. We are, after all, considering a lifetime appointment to the highest Court in the land.

I will not spend much time this morning going through the impressive background of Judge Sotomayor because I think all Members agree that her experience and her academic credentials meet the threshold of what the American people expect in a Supreme Court Justice.

As an alumnus of two of the most prestigious schools in the Nation with a lengthy judicial record, Judge Sotomayor is certainly a quality nominee for the post. I am also sure she has inspired many throughout her noble career.

More important than the Ivy League schools and the length of public service, however, is the judicial record of a nominee and the decisions she has made during her tenure on the bench.

While many see a lengthy judicial record as something that could only be considered a positive factor in determining a nominee's suitability to serve

on the highest Court in the land, others, including myself and many of my constituents, see it as an opportunity for a panoramic view into the decision-making process of a nominee.

Just as I looked into the background and experience of Judge Roberts and Judge Alito, I did the same thing with Judge Sotomayor. With all the years she has served on the Federal bench, she has plenty of case material to examine and consider.

Among the most important factors in determining one's suitability for the High Court is the nominee's understanding and appreciation for the role they are about to take on. Other than having the ultimate say in the judicial branch's analysis of the case at hand, the proverbial last word, it is no different than a judge's role on any lower court.

I believe a judge's role is to adhere to the longstanding case precedent and to apply the law according to a strict interpretation of the Constitution. Let me say that again because I believe it is too important to go unheard.

I believe a judge's role is to adhere to the longstanding case precedent and apply the law according to the strict interpretation of the U.S. Constitution.

That is my understanding of the judge's role in our country. Others may have different views, and they certainly are entitled to them. As I have said, I am troubled by her decisions in cases where she has appeared to rely on something other than well-settled law to come to a decision. My fear is that she was unable to separate her personal belief system from that of the letter of the law.

In our one-on-one meetings, Judge Sotomayor gave me her assurances that she would stick to the letter of the law. Her judicial record indicates otherwise, particularly in a couple of very significant places and recent occurrences. While my colleagues have mentioned both of them prior to me stating them again, today I think they bear repeating. Both cases highlight how Judge Sotomayor adheres to applicable case precedent.

First is the Ricci case. I think it is important to take a close look at her decision in *Ricci v. DeStefano*. This is a case where she dismissed the claims of 19 White firefighters and one Hispanic firefighter who alleged reverse discrimination based on the New Haven, CT, decision not to use the results of a promotional exam because not enough minorities would be eligible for promotion. In the Ricci case, she rejected the firefighters' claim in a one-paragraph opinion. When questioned about it in the confirmation hearing, she maintained she was bound by precedent. A potentially and ultimately legal landmark case warranting a careful and thorough review of the facts at hand and the law to be interpreted, and Judge Sotomayor dismissed the claim in one paragraph. Clearly, a case with issues involving race and discrimination deserved more than a one-paragraph explanation and analysis.

Even the Obama Justice Department could not defend her actions and submitted a brief to the Supreme Court on the matter. In it, they agreed that the decision by Judge Sotomayor should be vacated and that further proceedings on the case were warranted. This is the Justice Department of the Obama administration.

When the Supreme Court issued their opinion in the case, they stated that the precedent relied on for her decision did not exist. When pressed in the confirmation hearing about her decision, she avoided citing the particulars and simply explained that she was following established Supreme Court and Second Circuit precedent. The most troubling thing for me to grasp about this response is the Supreme Court says, in their reversal of her decision, that precedent for Ricci did not exist at all. It was a 5-to-4 decision by the Supreme Court, but all nine Justices disagreed with her reasoning—a unanimous rejection of her argument by the Supreme Court. The Supreme Court said precedent did not exist.

*Maloney v. Cuomo*, a second amendment case, is another decision of Judge Sotomayor that troubles my impression of her ability to separate her own beliefs from that of the letter of the law. It was just decided this year—so recently, in fact, that it has not even had a chance to be reviewed by the Supreme Court.

Not to rehash the facts of the case in too much detail, but in *Maloney v. Cuomo*, Judge Sotomayor was faced with determining whether an individual right—in this case, the right to bear arms—could also be enforced against a State. She decided the *Maloney* case after the historic *Heller* decision specifically concluded, without any explanation, that the right to bear arms is, in fact, not a fundamental right—a conclusion no other court has ever reached. As a matter of fact, I cosponsored an amicus brief which supported the argument that the right to bear arms is a fundamental right and one that could not be taken away by government without the highest standard of review. This was the argument that ultimately favored the Supreme Court in their decision.

To me, a nonlawyer, her decision in *Maloney* stands directly contrary to what the Supreme Court had just concluded in the *Heller* case. So not only did the Supreme Court set the precedent, she ignored the precedent of *Heller* in the ruling of the *Maloney* case. How could Judge Sotomayor so distinctly and openly come to the conclusion that bearing arms was not, in fact, a fundamental right when the Supreme Court, just months before, ruled the opposite way? Where did her reasoning come from? I am troubled by the lack of deference and adherence to the High Court's decision, and it leads me to call into question the commitment she made to me in a one-on-one meeting.

Actions, in this case—actually, decisions—speak much louder than rhet-

oric. These are just two recent, clear examples of where her record as a judge, while lengthy, caused me to call into question her ability to apply case precedent to come to a decision that would affect the lives of North Carolinians and the whole Nation.

These two decisions I have cited are not examples of missteps early in her career or decisions based on lack of experience. These are decisions Judge Sotomayor made after 17 years of experience on the Federal bench. These are decisions made within the last year or so by a seasoned Federal judge who is being considered for a lifetime appointment to the Supreme Court of the United States.

My esteemed colleague from North Carolina mentioned in her speech supporting Judge Sotomayor that the late Senator Jesse Helms, who was a dear friend of mine, supported the nomination of Judge Sotomayor to be a judge on the Second Circuit Court of Appeals. What Senator Helms did not have when he reviewed her nomination, however, was the benefit of Judge Sotomayor's judicial record during her decade of service on the appellate court.

It is imperative that all Members of the Senate look at the cases judges have decided and not just say they have been through the confirmation process in the Senate, therefore it should be automatic the second time. Their decisions weigh on the relevance of their nomination and on their confirmation.

I am sure her impressive academic and professional resume influenced Senator Helms, and I am sure he gave her the benefit of the doubt without any reason to question how she might rule on the bench. I have, and the Senate has, the benefit of reviewing Judge Sotomayor's actual decisions as a circuit judge, in addition to her statements to the record. I have the benefit of seeing if she stuck to the letter of the law as she stated she would do in testimony when nominated for the appellate court in 1998. She has not stuck to the letter of the law.

In 1998, she said, in response to a question from the current ranking member of the Judiciary Committee:

Sir, I do not believe we should bend the Constitution under any circumstance. It says what it says. We should do honor to it.

Quite frankly, I believe she bent the Constitution when she ruled in the *Maloney* case that the right to bear arms was not a fundamental right of the American people.

I have repeatedly said that the decisions made by the Supreme Court affect the lives of every American. After taking into consideration Judge Sotomayor's answers to my questions, reviewing her decisions that appear to have departed from the normal principles of jurisprudence, I find little predictability in her decisions and the implications they might have. I am concerned by the several examples where I believe Judge Sotomayor strayed from the rules of strict statutory construc-

tion and legal precedence and went with her own deeply-held beliefs, while providing little in the way of explanations. Therefore, I am unable to support her nomination to the Supreme Court.

I realize, at the conclusion of the next several days, Judge Sotomayor has the votes to be a Justice. I will continue to watch the decisions she makes based upon the answers she provided to me. But as most, if not all, have stated, this is a lifetime appointment. The debate that happens over the next 48 hours will determine, in many cases, whether a change might happen in this nomination. We cannot end this debate without the realization that we will live for generations to come with the decisions of this Court, the next Court, and the next Court. It will be just as incumbent on Members of the Senate in the future to make sure that those nominees are debated thoroughly, that their records are reviewed in great detail, and that their pledge to protect the Constitution and to follow it as a Justice is upheld. My hope is that I am incorrect about how Judge Sotomayor will, in fact, use the Constitution. Today, I announce that I will vote against her.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MARTINEZ. Mr. President, I rise to speak on the nomination of Judge Sotomayor to the Supreme Court. I am happy to have this opportunity, for I view it as a historic moment in many ways.

The confirmation of a Supreme Court nominee is one of the most solemn and unique duties in our constitutional system of government. The Framers, recognizing the risk of abuse inherent in a lifetime judicial appointment, created a process that brings together all three branches of the Federal Government. The Constitution, article II, section 2, requires that a nominee to the Federal court must be selected by the President and then "with the advice and consent of the Senate." These moments must be appreciated and approached with a great deal of thoughtfulness and respect. This is all the more true when the appointment is to our highest Court, the Supreme Court.

There was a time when Members of the Senate seemed to better understand their role, when Senators expected a President of the other party to pick a judge who would likely be different from someone they would have picked. There are a couple of examples I would like to use.

Justice Ginsburg, a very talented person who served as general counsel to the ACLU, was not likely to have been someone selected by a Republican President. But yet she was confirmed with 95 votes. Republicans knew she would be a liberal Justice, but she was also well qualified for the job.

There is another example; that is, Justice Antonin Scalia. He was picked by a Republican President and received

98 votes. Every Democrat knew or probably should have known that they were voting for a conservative, but they also understood that then-Judge Scalia was incredibly qualified and should be serving on the Supreme Court, given that he had been nominated by a President and had the requisite qualifications, which is really the essence of what this confirmation process is and should be about.

But things have changed since those votes. They have changed from what is historically acceptable and what has been the long historic tradition of the Senate when it comes to Senate confirmations of judicial nominees. Over the past decade, I believe the Senate has lost sight of its role to advise and consent.

I notice another example. The nominations of Miguel Estrada, Chief Justice Roberts, and Justice Alito—all three of these illustrate how partisan politics have been permitted to overwhelm the fundamental question posed to the Senate, which is, Is this nominee qualified? Do you give your advice and your consent?

My colleagues will recall that Mr. Estrada was first nominated by President George W. Bush to the DC Circuit in May of 2001. He was unanimously rated “well-qualified” for the bench by the American Bar Association.

Mr. Estrada was someone who had a very impressive history and personal story and resume. He was a native of Honduras. Mr. Estrada immigrated to this country at age 17, graduated magna cum laude and Phi Beta Kappa from Columbia University. He received his law degree from Harvard in 1986, where he was a member of the Harvard Law Review, and went on to clerk on the Supreme Court for Justice Kennedy.

Mr. Estrada then entered private practice and was a very well-respected lawyer working in a New York law firm and served as an assistant U.S. attorney in the Southern District of New York, where I believe our nominee also served. But then Mr. Estrada took a job in the George H.W. Bush administration as an Assistant Solicitor General. What does an Assistant Solicitor General do? They prepare and argue cases before the Supreme Court. What could be a better training ground, in addition to having a prior clerkship for a Court member, than to be an Assistant Solicitor General? As a longtime attorney, I always admire greatly those who have served in that office because they are the very best of the very best.

But politics intervened. He was branded a conservative. Through the course of an unprecedented seven cloture votes, Democrats in this body filibustered his nomination. Time and again, they filibustered his nomination. It lingered for 28 months, until he finally withdrew—exhausted, wanting to get on with his life, knowing he needed to be able to continue to do work for clients, that he could not con-

tinue to be in this limbo where he had been for 28 months because of the misguided notion that he was just too conservative and so it was OK to filibuster him. For 28 months he was hanging, dangling in the wind. That was not right. It was not to the Supreme Court, but some feared that someday he might be a Supreme Court candidate, he might have been the first Hispanic serving in the Supreme Court, nominated, perhaps, by a Republican President.

So while the nominations of Chief Justice Roberts and Justice Alito ended quite differently from Mr. Estrada's, the record is, frankly, equally disturbing.

During the debates on both Roberts and Alito, then-Senator Barack Obama declared each man to be qualified to sit on the Supreme Court. Of then-Judge John Roberts, Senator Obama said, right here on the Senate floor:

There is absolutely no doubt in my mind Judge Roberts is qualified to sit on the highest court in the land.

To which I would then say: So why won't you vote for him?

He then said of then-Judge Alito:

I have no doubt that Judge Alito has the training and qualifications necessary to serve. He's an intelligent man and an accomplished jurist. And there's no indication he's not a man of great character.

But despite these emphatic statements of confidence, then-Senator Obama voted against confirmation. Why? Because of his perception that their philosophy would not allow him to vote for them.

Given this record, some of my colleagues conclude that what is good for the goose is good for the gander; that because of these recent precedents, and despite her qualifications, they may still vote against Judge Sotomayor's confirmation. I could not disagree more heartily.

It is my hope that starting today, we will no longer do what was done to Miguel Estrada; that beginning today, no Member will pursue a course and come to the floor of this Chamber to argue against the confirmation of a qualified nominee.

So what about our current nominee? What makes her qualified? Well, first, I think we do have in Judge Sotomayor a very historic moment, an opportunity. It will be the first Hispanic to serve on the highest Court of this land. It is a momentous and historic opportunity.

But that is not good enough. What makes her qualified? Well, I think experience, knowledge of the law, temperament, the ability to apply the law without bias—these qualifications should override all other considerations when the Senate fulfills its role to advise and consent to the President's nominee, as dictated by the constitutional charge we have. These are really the standards by which we as a body should determine who is qualified to serve on any Federal court, including the highest Court of the land.

These are the standards I have used in evaluating Judge Sotomayor's nomination to the Supreme Court. She has the experience. She knows the law. She has the proper temperament.

Here is something that is very important: Her 17-year judicial record overwhelmingly indicates she will apply the law without bias. That is very important because we could find someone who really is facially qualified but whose views might be, for some reason, so outside the mainstream, so different from what the norm of our jurisprudence would be, that it might render them, while facially qualified, truly unqualified—that they really could not be relied on to look at a case and apply the facts and the evidence and apply the law to the evidence presented, that they would not follow the law, that they would not be faithful to their oath because their views would be so extreme, so outside the mainstream, so completely beyond what would be the norm or considered to be the norm. But here in this person we have a 17-year record. She has written thousands of opinions. These opinions provide the body of law of what she does as a judge—not what she said to a group of students one day, trying to encourage them in their lives and what they might be doing, not what someone might gain from reading an opinion that perhaps they would not agree with. It is not about whether we agree with her outcomes, it is whether her opinions were reasoned, whether they had a foundation in law, whether they were reasonable decisions, whether she reached them on the basis of law and evidence that are supported by sound legal thinking. Her worst critics cannot cite a single instance where she strayed from sound judicial thinking.

I believe she will serve as an outstanding Associate Justice to the U.S. Supreme Court, and she will be a terrific role model for many young people in this country.

Were I to have had my opportunity to pick, I may have chosen someone different than Judge Sotomayor. But that is not my job. I do not get to select judges. I get to give advice and consent. We sometimes confuse the role of the Senate. Elections have their consequences. Some of her writings and her statements indicate that her philosophy might be more liberal than mine, but that is what happens in elections.

When I was campaigning for my colleague and dear friend JOHN MCCAIN, I knew it was going to be important because there would be vacancies to the Court. I knew I would be much more comfortable with a nominee whom JOHN MCCAIN would nominate than one my former colleague and friend, President Barack Obama, might nominate. The President has the prerogative, the obligation, the responsibility to choose his own nominees. Our job is to give advice and consent.

The President has chosen a nominee, and my vote for her confirmation will

be based solely and wholly on relevant qualifications. Judge Sotomayor is well qualified. She has been a Federal judge for 17 years. She has the most experience of any person—on-the-bench judicial experience of any person—nominated for the Court in a century. In 100 years, there has not been anyone who has been on the bench with such a distinguished record for such a long period of time. That is why, by the way, her record is really her judicial decisions. We do not have to wonder. We do not have to sit around and try to divine whether someday she will answer the siren call to judicial activism, as I have heard someone say on the floor of the Senate. You do not have to wonder. You can wonder, and it might give you an excuse to vote against someone who is otherwise qualified, but the fact is, with a 17-year record, you should have a pretty good idea whether that siren call would have been answered by now. To my estimation, it has not been.

She received the highest possible rating from the American Bar Association for a judicial candidate—equal to that of Miguel Estrada, equal to that of Chief Justice Roberts, and equal to that of Justice Alito. She has been a prosecutor. She has been, throughout her career, an outstanding lawyer. As a prosecutor, she was a pretty tough one too. With less than a handful of exceptions, her 17-year judicial record reflects that while she may be left of center, she is certainly well within the mainstream of legal thinking.

Her mainstream approach is so mainstream that it has earned her the support of the U.S. Chamber of Commerce as well as the endorsement of several law enforcement and criminal justice organizations. She has been endorsed by the National Fraternal Order of Police, the National Sheriffs' Association, and the International Association of Chiefs of Police. I daresay she will be a strong voice for law and order in our country.

I disagree with Judge Sotomayor about several issues. I would expect to have disagreements with many judicial nominees of the Obama administration but probably fewer with her than some I might see in the future. Although I might disagree with some of her rulings, we know she has a commitment to well-reasoned decisions—decisions that seek, with restraint, to apply the law as written. I do believe she will rule with restraint. That has been her judicial history and philosophy. For instance, I believe her view as expressed in her panel's *Maloney v. Cuomo* opinion of whether the second amendment applies against State and local governments is too narrow and contrary to the Founders' intent. But I also know there is significant and well-reasoned disagreement among the Nation's appellate courts on this issue. In other words, it is not out of the mainstream. On this issue, I accept the idea that reasonable people may differ.

This debate raises critical and difficult issues regarding the role of fed-

eralism in the application of fundamental constitutional rights. But the confirmation process is not the proper place to relitigate this question, nor is Judge Sotomayor's judicial record on this issue outside the mainstream.

I believe her statements on the role of international law in American jurisprudence reflect a view that is too expansive. Yet her judicial record indicates that, in practice, she has given only limited, if any, weight to foreign court decisions. For example, in *Croll v. Croll*, a 2000 international child custody case involving the Hague Convention on International Child Abduction, Judge Sotomayor wrote a dissenting opinion in which she concluded that the holdings of the courts of foreign nations interpreting the same convention were "not essential" to her reasoning.

I believe some of the statements she has made in her speeches about the role of one's personal experience are inconsistent with the judicial oath's requirement that judges set aside their personal bias when making those decisions. There are several of my colleagues who say these statements demonstrate that Judge Sotomayor is a judicial activist in hiding. This assertion, however, is not supported by the facts. We can throw it out there, but it is not supported by the facts. The relevant facts—her 17-year judicial record—show she has not allowed her personal biases to influence her jurisprudence. They can talk about her speeches, but they cannot talk about a single solitary opinion in 17 years on the bench where that type of a view has been given life, where that type of a view has found itself into the pages of a single one of her opinions. I would rather put my trust and my expectations for the future on her 17-year record of judicial decisions than I would on one or two speeches she might have given over 10 or 15 years.

Those who oppose Judge Sotomayor have yet to produce any objective evidence that she has allowed her personal bias to influence her judicial decision-making. Moreover, in her testimony before the Judiciary Committee, she reiterated her fidelity to the law, that as a Justice she would adhere to the law regardless of the outcome it required.

So based on my review of her judicial record and her testimony before the Judiciary Committee, I am satisfied Judge Sotomayor is well qualified to sit on our Nation's highest Court. I intend to vote for her confirmation. I intend to also be very proud of her service on the Supreme Court of the United States where I think, again, she will serve a very historic and unique role to many people in this Nation who I know will look to her with great pride.

Thank you, Mr. President. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KAUFMAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BOND. Mr. President, I rise today to speak on the nomination of Judge Sonia Sotomayor to the Supreme Court of the United States.

Few positions carry more honor, or solemn duty, than becoming a Justice of the highest court of the greatest democracy.

Also, few duties carry more honor, or solemn responsibility, than giving advice and consent on who should become a Justice on the highest Court of the greatest democracy.

The walls of that Supreme Court form the vessel that holds the great protections of our liberty.

Those black robes give life to the Constitution's freedoms and the flourishing of our ideas and beliefs.

If the Congress is the heart of our democracy, walking to the drumbeat of the people, then the Supreme Court is our soul guiding us on what is right and what is wrong.

In my role as a Senator voting to fill that vessel, issuing those robes, I have always looked to the Constitution to guide my obligation to give advice and consent.

It is an obligation separate and apart from my role as a legislator, when I vote for or against legislation before this body.

Indeed, if the Constitution meant for us merely to vote on nominees, by simple or super majorities, it could easily have said so.

If we were meant to do nothing more than cast a vote based on whether we agreed or disagreed with a nominee, where would we be then?

Would the halls of government be empty every time a President faced a Congress of the opposite party?

Would the Cabinet sit empty because of partisan divide?

Would vacancies to the Supreme Court go unfilled, because a majority of one party simply disagreed with the President of another?

Of course, that could not have been the intent of the Framers.

What kind of Justices would we have, with nothing more than partisan majority divides?

Would a Senate controlled by the opposite party allow only the most moderate of voices, or justices with no voice at all?

Would it approve only judges that said nothing, or wrote nothing with which the majority disagreed?

If some are saying that a Democratic President should not have a liberal Justice, does that mean a Republican President should not have conservative Justices?

That is not something I could support, for I surely supported judicially conservative Justices such as Roberts and Alito, Thomas and Bork—Scalia certainly if I had been in the Senate at the time.

That is the kind of Justice I support, a judge that calls balls and strikes like an umpire, not letting their own personal views bias the outcome of the trial.

The statue of justice is blindfolded for a reason, so that she cannot tip the scales of justice with the prejudice of bias or belief.

But I have supported Justices with whom I disagreed on this philosophy. Justices Breyer and Ginsberg come to mind.

They take a more active role in shaping their decisions, to fit an ideal of their own vision.

I supported these nominees of a Democratic President, as did 86 of my colleagues for Justice Breyer, and 95 of my colleagues for Justice Ginsberg.

I hope those votes do not reflect a time that has slipped away, when partisanship did not infect every facet of our political life.

I could forget that time, as President Obama did when he was a Senator.

I could easily say, as Senator Obama said, that I disagree with a nominee's judicial approach, and that allows me to oppose the nominee of a different party.

Luckily for President Obama, I do not agree with Senator Obama.

I reject the Obama approach to nominees.

While I reject the way Senator Obama approached nominations, that does not mean that I support the way Judge Sotomayor approaches judging.

I disagree that the civil rights of a firefighter mean so little that they do not deserve even a full opinion before an appeals court.

I disagree that we should inspire with suggestions that wisdom has anything to do with the sex of a person or the color of their skin.

I disagree that judges should ever consider foreign law when looking for meaning in U.S. statutes or the U.S. Constitution.

I disagree that the second amendment's protection of an individual's right to bear arms does not apply to States.

But I do agree that Judge Sotomayor has proven herself a well qualified jurist.

I do agree that she has proven herself as a talented and accomplished student, Federal prosecutor, corporate litigator, Federal trial judge, and Federal appeals court judge.

She has the backing of many in the law enforcement community including the Fraternal Order of Police, the National Sheriffs Association, and the National Association of District Attorneys.

I do agree that Judge Sotomayor has proven herself as a leader of her community, who inspires the pride and hopes of a large and growing portion of our American melting pot.

I do agree that Judge Sotomayor has proven herself as a symbol of breaking through glass ceilings.

And I do agree that my choice for President did not win the last election,

and that our people's democracy has spoken for the change and they are getting it. Elections do have consequences.

Now, hearing the call of that decision of our democracy does not mean that I support the President in everything he has proposed.

I did not agree with a stimulus that has meant only more government spending and national debt as the unemployment continues to rise.

I do not agree with cap and trade legislation that will raise energy taxes and kill millions of lost jobs without even changing the climate because China and India refuse to act the same.

I do not agree with a government takeover of health care that forces millions of Americans off their current health care, drives health care costs even higher for families, rations care, restricts access to the latest cures and treatments, and puts health care decisions in the hands of government bureaucrats rather than doctors and patients.

But I do agree that the country is tired of partisanship infecting every debate. The country is tired of every action by the Congress becoming a political battle.

And so, I will not follow the hypocrisy of many of my Democratic colleagues who refused to support Justices Roberts and Alito because they disagreed with their judicial philosophy and now suggest that Republicans not do the same.

I respect and agree with the legal reasoning of my colleagues who will vote no, but I will follow the direction of the past, and my hope for the future, with less polarization, less confrontation, less partisanship.

My friends in the party can be assured that I will work as hard as anybody to ensure that the next Presidential election has consequences in the opposite direction.

For my conservative friends, the best way to ensure that we have conservative judges on the bench is work to see that we elect Presidents who will nominate them.

Then we can resume filling the bench with more judges like Justice Roberts.

For my liberal friends I hope they remember this day when another qualified nominee is before the Senate who is conservative. The standard set by Senator Obama should not govern the Senate.

As for Judge Sotomayor, she has the accomplishments and qualities that have always meant Senate confirmation for such a nomination.

The Senate has reviewed her nomination and has asked her its questions. There have been no significant findings against her. There has been no public uprising against her.

I do not believe the Constitution tells me I should refuse to support her merely because I disagree with her.

I will support her. I will be proud for her, the community she represents and the American dream she shows possible.

I will cast my vote in favor of the nomination of Judge Sotomayor, and I urge my colleagues to do the same.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I wish to address the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court as well. I have spoken about this nomination several times, both here on the Senate floor and on the Senate Judiciary Committee on which I serve. I have shared what I admire about Judge Sotomayor, including her long experience as a Federal judge, her academic background, which is stellar, and her record of making decisions that for the most part are within the judicial mainstream. I have also explained before why I will vote against this nomination and I wish to reiterate and expand on some of those comments here today as all of us are stating our intentions before this historic vote which I suspect will be held sometime tomorrow.

First, I cannot vote to confirm a nominee to the U.S. Supreme Court who restricts several of the fundamental rights and liberties in our Constitution, including our Bill of Rights. Based on her decision in the Maloney case, Judge Sotomayor apparently does not believe that the second amendment right to keep and bear arms is an individual right. Indeed, she held in that case that the second amendment did not apply to the States and local jurisdictions that might impose restrictions on the right to keep and bear arms. Then based on her decision in the Didden v. The Village of Port Chester case, she apparently does not believe that the takings clause of the fifth amendment protects private property owners when that private property is taken by government for the purpose of giving it to another private property owner, in this case a private developer. I am very concerned when the government's power to condemn property for a private purpose conflicts with the stated intention of the Framers of the Constitution that the right of condemnation of private property only extend to public uses and then, and only then, when just compensation is paid.

Then based upon her decision in the Ricci case—this is the New Haven firefighter case—which calls into question her commitment to ensure that equal treatment applies to all of us when it comes to our jobs or promotions without regard to the color of our skin. Indeed, in that case, because of her failure to even acknowledge the seriousness and novelty of the claims being made by the New Haven firefighters, she gave short shrift to those claims in an unpublished order and denied Frank Ricci, Ben Vargas, and other New Haven firefighters an opportunity for a promotion, even though they excelled in a competitive, race-neutral examination, because of the color of their skin.

Fortunately, the Supreme Court of the United States saw fit to overrule



Judge Sotomayor's judgment in the New Haven firefighter case. Millions of Americans became aware, perhaps for the first time, of this notorious decision and what a morass some of our laws have created when, in fact, distinguished judges like Judge Sotomayor think they have no choice but to allow people to be denied a promotion based upon the color of their skin for fear of a disparate impact lawsuit, even when substantial evidence is missing that such a disparate lawsuit would have merit or likely be successful.

I cannot vote to confirm a nominee who has publicly expressed support for many of the most radical legal theories percolating in the faculty lounges of our Nation's law schools.

We heard this during the confirmation hearings and, frankly, Judge Sotomayor's explanations were unconvincing. Previously, she said there is no such thing as neutrality or objectivity in the law—merely a series of perspectives, thus, I think undermining the very concept of equal justice under the law. If the law is not neutral, if it is not objective, then apparently, according to her, at least at that time, the law is purely subjective, and outcomes will be determined on which judge you get rather than what the law says.

She has said in one notorious YouTube video that it is the role of judges to make policy on the court of appeals. She has said that foreign law can get the “creative juices flowing” as judges interpret the U.S. Constitution, and she has said, as we know, ethnicity and gender can influence a judge's decision and judges of a particular ethnicity or gender can actually make better decisions than individuals of a different gender or ethnicity.

Third, I cannot vote to confirm a judicial nominee who testified before the Judiciary Committee that her most controversial decisions were guided by precedent, when her colleagues on the Second Circuit, and indeed the Justices of the U.S. Supreme Court who reversed her, said just the opposite; or who testified that she meant the exact opposite of what she said—every time she said something controversial and was trying to explain that; or a person who testified that she had no idea what legal positions the Puerto Rican Legal Defense and Education Fund was taking—even when she chaired the litigation committee of its board of directors.

The hearings before the Senate Judiciary Committee have a very important purpose, and that purpose is informed by article II of the U.S. Constitution that provides for advice and consent on nominations. It is not to serve as a rubberstamp. I have heard colleagues say that elections have consequences, and the President won. Well, it is obvious and evident that elections have consequences and that President Obama won. But that doesn't negate or erase the obligation each Senator has under the same clause and

article of the Constitution to provide advice and consent based on our best judgment and good conscience.

In the case of Judge Sotomayor, the question becomes: What will she do with the immense power given to a member of the U.S. Supreme Court? What impact will she have on our rights and liberties over the course of a lifetime? Of course, this appointment is for life. In short, the question is, what kind of Justice will she be on the Supreme Court, where her decisions are no longer reviewed by a higher court as they were as a Federal district court or a court of appeals justice. The question is, will she be the judge she has been as a lower court judge, making decisions which, by and large, have been in the mainstream, with some notable exceptions, which I have talked about, or will she be untethered? Will she be the Judge Sotomayor of some of her radical speeches and writings, which cause me concern?

The answers to these questions, I regret, are no clearer after the hearings than before. The stakes are simply too high for me to confirm someone who could redefine “the law of the land” from a liberal, activist perspective.

I respect different views of Senators on this nomination, and I have no doubt that Judge Sotomayor will be confirmed. But I am unwilling to abdicate the responsibility I believe I have as a Senator when it comes to voting my conscience and expressing my reservations. The Senate developed our confirmation process for a very important purpose: to learn more about the individual nominees. But over the last several weeks, I think we have also learned more about a rising consensus with regard to what we should expect from a judge. I will highlight two important lessons we have learned.

One is encouraging to me and one is worrisome. Let's start with the good news. I believe Republicans and Democrats on the Judiciary Committee, and indeed Judge Sotomayor herself, seem to say the appropriate judicial philosophy for nominees to the Federal bench is one that expresses fidelity to the law and nothing else. Over years, we have been debating whether we have an original understanding of the Constitution or some evolving Constitution, even though it can be interpreted in different ways, even though the words on the paper read exactly the same. We went back and forth on the merits, or lack of merits, of judicial activism—judges taking it upon themselves to impose their views rather than the law in decisions. On many occasions, our disagreements over judicial philosophy were anything but civil and dignified.

I think of the nomination of Miguel Estrada to the District of Columbia Court of Appeals, which some have said is the second highest court in the land. Miguel Estrada, although an immigrant from Honduras who didn't speak any English when he came to the United States, graduated from a top university and law school in this coun-

try. He was filibustered seven times and denied an up-or-down vote. One member of the Judiciary Committee, disparaging Mr. Estrada's character, called him a “stealth missile, with a nose cone, coming out of the right wing's deepest silo.”

Samuel Alito, an Italian-American who is proud of his heritage, had to defend himself against false charges of bigotry—accusations that left his wife in tears.

Then there was Clarence Thomas—perhaps the one we remember the best—an African American nominee to the Supreme Court who described his experience before the Judiciary Committee this way:

This is a circus. It's a national disgrace. And from my standpoint as a black American, it is a high-tech lynching for uppity blacks.

These nominees were accused at various times of certain offenses, even though the real crime, as we all know, was a crime of conscience. They dared to be judicial conservatives—a philosophy that the nominee we are talking about today and Senate Democrats now appear to embrace.

I hope the days of the unfair and uncivil and undignified Judiciary Committee hearings are behind us. I hope our hearings are more respectful of the nominees, as was this hearing for Judge Sotomayor. She herself proclaimed that she could not have received fairer treatment. I appreciated her acknowledging the fairness and dignity of the process.

I hope the “thought crimes” of yesterday have now become the foundation for a new bipartisan consensus, including the views that Judge Sotomayor affirmed at her hearing and that we affirmed as both Republicans and Democrats, and the views that Judge Sotomayor rejected at her hearings and we rejected as both Republicans and Democrats.

Let me give a few examples of our new bipartisan consensus on the appropriate judicial philosophy for a nominee to the U.S. Supreme Court. Judge Sotomayor, at her hearing, put it this way:

The intent of the Founders was set forth in the Constitution. . . . It is their words that [are] the most important aspect of judging. You follow what they said in their words, and you apply it to the facts you're looking at.

I cannot think of a better expression of a modest and judicially restrained philosophy that I embrace than what Judge Sotomayor said at her hearing. Both Republicans and Democrats appeared to be pleased with that statement.

We agreed that foreign law has no place in constitutional interpretation. Notwithstanding her earlier statements, Judge Sotomayor said at the hearing:

Foreign law cannot be used as a holding or a precedent, or to bind or influence the outcome of a legal decision interpreting the Constitution or American law.

As I said, notwithstanding her earlier statements, I agree with that statement she made at the hearing. I believe both Republicans and Democrats were satisfied with that statement as well.

We agreed that “empathy” or “what’s in a person’s heart”—to borrow a phrase from then-Senator Obama—should not influence the decisions of a judge. I think we were all a little surprised when Judge Sotomayor, at the hearing, rejected President Obama’s standard. She said:

I wouldn’t approach the issue of judging the way the President does. . . . Judges can’t rely on what’s in their heart. They don’t determine the law. Congress makes the law. The job of a judge is to apply the law. And so it’s not the heart that compels conclusions in cases—it is the law.

I agree with that statement, and indeed Republicans and Democrats alike appeared to embrace that statement of an appropriate judicial philosophy. No one defended the statement that then-Senator Obama made with regard to empathy or what is in a person’s heart. I was encouraged to see that.

Mr. President, supporters of Judge Sotomayor appear willing to accept her statements that I have just quoted at the Judiciary Committee at face value. I hope they are right; I really do. I certainly intend to take my colleagues’ agreement with these statements at face value. I expect future nominees to the Federal judiciary to conform to this new consensus articulated by Judge Sotomayor at her hearing and embraced in a bipartisan fashion by the members of the Judiciary Committee.

Mr. President, I have no question about the outcome of this vote on Judge Sotomayor. I regret, for the reasons I have stated, that I cannot vote for her because I cannot reconcile her previous statements with her testimony at the Judiciary Committee hearing. Also, I wish Judge Sotomayor well as she serves on the Supreme Court. The concerns that I raised here, and the uncertainty I have about regarding what kind of Justice she will be—I hope she will prove those concerns unjustified by the way she distinguishes herself as a member of the U.S. Supreme Court. I hope her tenure will strengthen the Court, as well as its fidelity to the plain meaning of the Constitution. I congratulate her and her loved ones on her historic achievement.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SPECTER. Mr. President, I ask unanimous consent that the hour of Democratic speaking time be divided 30 minutes under my control, 15 minutes for Senator LAUTENBERG, and 15 minutes for Senator DODD.

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

Mr. SPECTER. Mr. President, I have sought recognition to comment about the confirmation of Judge Sotomayor for Associate Justice to the Supreme Court and to comment on other subjects directly related to the confirmation process and comment about the reality of judicial legislation, about the emerging standard on rejecting the tradition of deference to the President, with Senators’ ideology being the determinant, the Court’s reduced workload, the failure to decide major cases, the lack of public understanding of what the Court does, the need for accountability and transparency, and the strong case to be made for televising the Supreme Court.

For me, the confirmation of Judge Sotomayor is an easy one. During the 11 confirmation proceedings I have participated in and others I have studied, I know of no one who brings a stronger record than Judge Sotomayor: *summa cum laude* at Princeton, Yale Law School, Yale Law Journal, prestigious New York firm, assistant district attorney with DA Morgenthau who sings her praises, 17 years on the Federal bench.

The criticisms which were made against her, my judgment is they were vacuous. A great deal of time in committee was spent on her comment about “a wise Latina woman.” My view is that she should have been commended for that statement, not criticized. Why do I say “commend”? Why shouldn’t a woman stand up for women’s capabilities? In a society which did not grant women the right to vote until 1920, in a society which still harbors the tough glass ceiling limiting women, in a society where only two women have served on the Supreme Court, in a Senate where only 17 of the 100 Senators are women, I would expect a woman to proudly speak up for women’s competency.

To talk about being a Latino, well, what is wrong with a little ethnic pride? And isn’t it about time that we had some greater diversity on the Supreme Court? Isn’t it surprising, if not scandalous, that it took until 1967 to have an African American on the Court, Thurgood Marshall, and it took until 1981 to have the first woman on the Court, Sandra Day O’Connor?

Judge Sotomayor is a role model and will be a broader role model if confirmed. The conventional wisdom is that she will be confirmed. Isn’t there a greater assurance in a society as diverse as ours to have someone on the Court to represent that kind of diversity, all within the rule of law?

A criticism was made of her with respect to the New Haven firefighters case—very complex, very subtle, very nuanced on disparate impact. The Supreme Court divided 5 to 4. So what is there to criticize on Judge Sotomayor’s standing for joining a *per curiam* opinion?

I asked a question of the New Haven firefighters who appeared: Do you have

any reason to believe that Judge Sotomayor operated in anything but good faith? Both of the young firefighters candidly said they had no opinion on that subject.

Then there is the criticism about her conclusion, her judgment that second amendment rights are not incorporated within the 14th amendment due process clause to be applied to the States. That is the precedent of the Supreme Court of the United States. It is not up to a certain court to rule differently when they are bound by the Supreme Court, even if it is an old case.

The distinguished seventh circuit agreed with Judge Sotomayor. The argument was made well. The ninth circuit has said second amendment rights are applicable to the States.

Since the hearing, the court en banc in the ninth circuit has granted review of a decision by the three-judge panel with every indication that the three-judge panel in the ninth circuit will be reversed.

So when you add up all of the comments and all of the criticism, nothing, in my judgment, is left standing.

The issue of judicial legislation is one which occupied the thinking and consideration of a number of those who were opposed to Judge Sotomayor. But there is nothing in her record to suggest she will engage in judicial legislation.

When you take a look at the Supreme Court of the United States, that has become the rule of the era, as opposed to rule of law where the Court is supposed to interpret the Constitution and statutes and leave to the Congress and the State legislatures the job of establishing public policy.

During the era of the Warren Court, there was a vast expansion of constitutional rights. I was in the Philadelphia district attorney’s office at the time and literally saw the Constitution change day by day. In 1961, *Mapp v. Ohio* came down applying the fourth amendment protection on search and seizure to the States. In 1963, *Gideon v. Wainwright*, right to counsel; 1964, *Escobedo v. Illinois*; 1966, *Miranda*. Those were constitutional rights and changing values as articulated by Justice Cardozo in *Palko*.

But in more recent times, there has been a vast expansion of the Supreme Court, in effect, legislating. I refer specifically to the case *United States v. Morrison* which involved the issue of the legislation protecting women against violence. Chief Justice Rehnquist handed down an opinion saying that the “method of reasoning” of the Congress was deficient. The dissents on that 5-to-4 opinion laid out the vast record which supported the legislation.

The Supreme Court has adopted a standard of judging constitutionality as to whether the statute satisfies congruence and proportionality, a standard which has emerged very recently. It defies understanding to quantify or

figure out what congruence and proportionality means, except to give the Supreme Court carte blanche, in effect, to legislate.

Two cases interpreting the Americans with Disabilities Act went 5 to 4 in opposite directions between Titles I and II—one case holding one of them constitutional and the other was unconstitutional. Justice Scalia, dissenting in one case, characterized congruence and proportionality to be a flabby standard which, in effect, allowed the Court to legislate.

When Chief Justice Roberts appeared before the Judiciary Committee in response to questions from Senator DeWINE and myself, he said it was up to the Congress to make findings of fact, that that was a peculiarly legislative function because it is the Congress which has the hearings, the ability to develop facts, and it is congressional responsibility.

Yet when the Voting Rights Act case was heard earlier this year, although decided on narrower grounds, every indication is being given that Chief Justice Roberts' assurances to the Judiciary Committee are being reversed and that the Court, from all indicators, is on the verge of declaring the Voting Rights Act as unconstitutional, notwithstanding the voluminous record which was created and the great care the Senate operated to come down with the voting rights legislation.

So when you have a criticism of the problem of judicial legislation, it is my view that you ought to look at what Judge Sotomayor has done in 17 years on the bench. And there is no indication at all of her substituting her values. But when you come to the Supreme Court of the United States, there is good reason to question what they are doing.

There is, simply stated, a lack of understanding as to what goes on in the Court.

The one comment I do have, other than full support for Judge Sotomayor, was her reluctance to answer questions. One question which I asked her is illustrative. Chief Justice Roberts, in his confirmation hearing, when confronted with the light workload of the Court, said that he thought the Court could take on more responsibility. I asked Judge Sotomayor if she agreed with that conclusion. Judge Sotomayor would not answer the question. She said she would have to be more fully familiarized, even though the statistics which I quoted to her about the Court's workload contrasted with 1886 when the Supreme Court decided 451 cases; in 1985, there were only 161 written opinions; in 2007, only 67 written opinions.

It seemed to me plain that the Court could undertake more work, as Chief Justice Roberts had agreed, during his confirmation hearings. But there has developed an attitude among nominees who appear before the Judiciary Committee that it is unsafe to answer questions because of what happened to Judge Bork.

As I have pointed out in committee, and it is worth repeating, it is a myth that Judge Bork was defeated because he answered too many questions. In the context of his writings and in the context of his record where he advocated original intent, it was necessary for Judge Bork to speak up. Judge Bork was rejected because he had a view of the Constitution which was totally outside the constitutional continuum or outside the constitutional mainstream.

For example, in his testimony, he said that the equal protection clause applied only to race and ethnicity, but would not be extended to women, aliens, indigents, illegitimates, or others, in line with the decisions of the Supreme Court of solid precedents on the application of the equal protection clause. Judge Bork disagreed with the clear and present danger standard, established as far back as Justice Oliver Wendell Holmes.

When it came to his doctrine on original intent, he was at a loss to explain how you could desegregate the District of Columbia schools. On the same day that *Brown v. Board of Education* was decided, there was a companion case captioned *Bolling v. Sharpe* applicable to the District of Columbia. Judge Bork was of the view that there was no application of the due process clause; that you couldn't incorporate any of the 10 amendments and you couldn't incorporate the equal protection clause. But the Supreme Court desegregated the DC schools on the basis of holding that the equal protection clause was part of due process and due process did apply to the District of Columbia. Judge Bork was at a loss to answer that.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of an op-ed I wrote for the New York Times, dated October 9, 1987, which sets forth in some greater detail—which I do not have the time to go into now—the reasons why I voted against Judge Bork and I think the reasons why Judge Bork's nomination was defeated by the margin of 58 to 42 when it came before the Senate for a vote.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 9, 1987]

#### WHY I VOTED AGAINST BORK

(By Arlen Specter)

From the day in mid-July when Judge Robert H. Bork stopped by for a courtesy call until I telephoned him last week to say I would oppose his nomination, my goal was to figure out what impact Judge Bork would have on the people who came to the Supreme Court in search of their constitutional rights. At the end, having come to like and respect Judge Bork, I reluctantly decided to vote against him, because I had substantial doubts about what he would do with fundamental minority rights, about equal protection of the law and freedom of speech.

From the beginning, it was evident that this nomination process would be different from most. The traditional courtesy call

turned out to be much more because Judge Bork was willing—really anxious—to discuss his judicial philosophy. Unlike other nominees who had barely given name, rank and serial number, he enjoyed the exchange and doubtless figured that his extensive writings were so unusual that he would have to talk if he were to have any chance at confirmation.

Our first hour and a half meeting was interrupted by a Senate vote, so he returned a few weeks later for a similar session. In those discussions, I found a man of intellect and charm, who said, in essence, that his writings were academic and professorial and not necessarily indicative of what he would do on the Court.

During the August recess, when I had a chance to read many of his approximately 80 speeches, 30 law review articles and 145 circuit court opinions, I found a scholar and jurist whose views and opinions were vast and complex. In voting to confirm Chief Justice William H. Rehnquist and Justice Antonin Scalia last year, I had already decided that a nominee's judicial philosophy need not agree with mine. But I also believed that a nominee's views should be within the tradition of our constitutional jurisprudence. With that in mind, I compared Judge Bork's views with those of other conservative justices.

On freedom of speech, I was surprised to find that Judge Bork in his writings rejected Justice Oliver Wendell Holmes's standard of a "clear and present danger." Chief Justice Warren Burger's notion of constitutional protection for commercial speech and Justice (now Chief Justice) Rehnquist's Court opinion protecting a sexually explicit (as distinguished from an obscene) movie from censorship.

In Judge Bork's earliest views, only political speech was to be protected. He later modified that to include literature and art that involved political discussion. In the confirmation hearings, I was even more surprised to find him change his position and commit himself to apply the Holmes test even though he continued his strong philosophical disagreement.

Judge Bork's views on equal protection of the law also underwent a major change at the hearings. He committed himself to apply current case law after having long insisted that equal protection applied only to race and, more recently, to ethnicity. His narrow position had put him at odds with Chief Justice Rehnquist and Justices Sandra Day O'Connor and Scalia, as well as 101 years of Supreme Court decisions that had applied equal protection to women, aliens, indigents, illegitimates and others.

These significant shifts raised questions about Judge Bork's motives and the depth of his convictions. But I felt he should have a full opportunity to explain his new positions because a person is entitled to change.

During a long Saturday session, I had an unusual opportunity to explore at length some troubling aspects of Judge Bork's jurisprudence. I was particularly concerned with his writings on "original intent." He had maintained that judges had to base their opinions on the Framers' original intentions. Without adherence to original intent, he said, there was no legitimacy for judicial decisions. And without such legitimacy, there could be no judicial review.

But Judge Bork conceded during the hearings that original intent was often difficult, perhaps impossible, to discern. I feared that this approach could jeopardize the fundamental principle of constitutional law—the supremacy of judicial review. Although Judge Bork himself never went so far, some prominent political figures have suggested that the Supreme Court should not be the ultimate arbiter of constitutionality. Their

cause—with which I deeply disagree—could be aided by a Justice who questioned the legitimacy of judicial review.

I had also been concerned by Judge Bork's insistence on "Madisonian majoritarianism," the idea that, in the absence of explicit constitutional limits, legislatures should be free to act as they please. Conservative justices had traditionally protected individual and minority rights even without a specifically enumerated right or proof of original intent where there were fundamental values rooted in the tradition of our people.

Just this year, for example, Chief Justice Rehnquist and Justices O'Connor and Scalia had found a right in the Constitution for a prisoner to marry. But Judge Bork, at his confirmation hearing, could still find no acceptable rationale for the decision desegregating the District of Columbia schools 33 years ago.

I was further troubled by his writings and testimony that expanding rights to minorities reduced the rights of majorities. While perhaps arithmetically sound, it seemed morally wrong. The majority in a democracy can take care of itself, while individuals and minorities often cannot. Moreover, our history has demonstrated that the majority benefits when equality helps minorities become a part of the majority.

Despite these concerns, I was genuinely undecided—perhaps leaning a little toward Judge Bork—when he finished his impressive testimony at the end of the first week. He had conceded that there was a "powerful argument from a strong tradition" to find rights rooted in the conscience of the people, although not specified in the Constitution. He had also yielded to the "needs of the nation" on some constitutional matters that did not fall within the Framers' original intent. Perhaps his writings were only professorial theorizing.

As I listened to the other witnesses during the second and third weeks, and considered the implications of Judge Bork's total approach, my doubts grew about the application of his changed positions. For example, in Judge Bork's former view, which he last expressed 20 days before his nomination, equal protection should have been kept to concerns like race and ethnicity. Considering the many subtle and discretionary judgments involved, I felt it would be unfair to people who sought equal protection in the Supreme Court to have their cases decided by someone who had so long thought their claims unprotected by the Constitution under standards that were so elusive to apply.

Similarly, the hearings showed the great difficulty, if not impossibility, of Judge Bork's applying the "clear and present danger" standard to free speech cases. If there was a critical turning point, it was Judge Bork's responses regarding two cases.

The "clear and present danger" standard was restated by the Court in 1969, in *Brandenburg v. Ohio*, and again in 1973, in *Hess v. Indiana*. When Judge Bork committed himself to accepting *Brandenburg*, I pressed as to how we could be confident that he would apply that test to the next case, which obviously would be different on the facts. He promised he would, but then promptly insisted that he was not committed to *Hess* because it was an "obscenity" case.

Judge Bork's disagreement on *Hess*, a "clear and present danger" case, cast substantial doubt on his ability to apply cases he philosophically opposed and had long decried.

The hearings brought a record 140,000 calls and letters to my office. Wherever I went, it seemed that everyone had a strong opinion. The pressure was pervasive. On the afternoon the hearings ended, I talked again with

Judge Bork for more than an hour, and met later that evening with Lloyd Cutler, the former adviser to Jimmy Carter, who had been a principal supporter. My substantial doubts persisted, so I decided to vote no.

Mr. SPECTER. Moving on to another subject, which perhaps is of the greatest importance of what we see emerging from these hearings and the confirmation proceeding, is an emerging standard on rejecting the traditional deference to the President, with Senators substituting their own ideology in order to make the decision.

In the article I referred to on Bork, in the op-ed piece, I noted that in voting as to Chief Justice Rehnquist and Justice Scalia, I decided the judicial philosophy of a nominee need not agree with mine. When the hearings came up as to Justice Clarence Thomas, I made the observation that there might be an occasion, one day, when there would be a partnership between the Senate and the President with respect to looking at ideology. It has become accepted that elections do matter when the President moves to the nominating process. They are active parts in the Presidential campaigns, and the tradition has been to make the deference to the President's ideology.

I suggest we are seeing, in the confirmation process of Judge Sotomayor, in conjunction with the nomination process of Justice Alito, that there is a shift in that standard and that judgment. The issue was framed by the comments of then-Senator Barack Obama now President Barack Obama when he was commenting about his judgment on the Alito nomination and then Senator Obama had this to say:

There are some who believe that the President, having won an election, should have complete authority to appoint his nominee and the Senate should only examine whether the Justice is intellectually capable.

Senator Obama went on to say:

I disagree with this view. I believe it calls for meaningful advice and consent, and that includes an examination of the judge's philosophy, ideology.

In the Alito hearings, there is no doubt that in terms of academic, professional, and judicial competence, Justice Alito was well qualified—a Yale law graduate with a distinguished career in private practice, serving as a U.S. attorney for New Jersey, with 15 years on the circuit court. Some concerns were expressed as to his ideology on his view of a woman's right to choose; his dissenting opinion in *Planned Parenthood v. Casey* in the Third Circuit. Only four Democrats crossed the aisle to vote for Justice Alito. Today, according to the announcements that have been made, about that many Republicans are going to cross the aisle to vote for Judge Sotomayor.

Some of those who have announced their intention to vote against Judge Sotomayor have long records for not having opposed any judicial nominee. It is a complex issue. There is a question of pressure from the far right,

from those who might be looking at primary opposition. There is a question of partisanship, which has gripped this body with such intensity. But there is an overwhelming view that the approach of Judge Sotomayor and what she is likely to do on the Supreme Court is something which is contrary to their views as to when the matters ought to be decided.

It has long been accepted that you can't ask a Supreme Court nominee how he or she will decide a specific case, but there is an opportunity to glean from many factors the disposition or inclination of the nominees. And although many in this body had, for a long time, as I view it, made decisions based upon their own ideology, contrasted to what they accepted the nominee to do on the Court, I think that view has become crystallized and, as articulated by then-Senator Obama, is a view which has perhaps added weight now that it is President Obama.

Certainly, there are nominees whom I have voted for, if I were to have been the President and made the selection, it would have been different. If I were to have applied my own philosophy or ideology on the vote to confirm or not, it would have been different. When Judge Bork was so far out of the mainstream and had views so totally antithetical to the continuum of constitutional law—being out of the mainstream—it was different. But I think it is worth noting what is happening to the confirmation process, as Senators are moving to utilize their own ideology in deciding how to vote—illustrated, as I say, by Alito and the confirmation which we currently have—and not giving the traditional and customary deference to the President.

Moving on to the subject of the Court's reduced workload and the failure to decide major cases, in the context of the statistics which I cited—451 cases decided in 1886, 161 written opinions in 1985; the year 2007, only 67 signed opinions; the Supreme Court having decided not to hear the case involving the terrorist surveillance program, which posed a dramatic conflict between congressional authority under article I to enact the Foreign Intelligence Surveillance Act, with the President's asserted authority under article II as Commander in Chief to have warrantless wiretaps; the district court in Detroit declared the terrorist surveillance program unconstitutional. The Sixth Circuit reversed 2 to 1 on the grounds of standing—with the dissent being much better reasoned—a doctrine to avoid deciding the case and the Supreme Court denying cert. Similarly, on the conflict which was posed by litigation brought by the survivors of victims of 9/11 against Saudi Arabian princes, where the Congress had legislated in the Foreign Sovereign Immunities Act to exclude torts, as when you fly an airplane into the World Trade Center, the executive branch intervened. The Department of State objected through the Solicitor General to

the court hearing the case, and that case was not decided. Many circuit splits, which are detailed in a series of letters which I am going to ask to be admitted into the RECORD, letters which I sent to Judge Sotomayor, dated July 7, June 15, and June 25, detailing a great many circuit splits which the Court has not decided.

Mr. President, I ask to have printed in the RECORD the letters I referred to.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,  
Washington, DC, July 7, 2009.

Hon. SONIA SOTOMAYOR,  
c/o The Department of Justice,  
Washington, DC.

DEAR JUDGE SOTOMAYOR: As noted in my letters of June 15 and June 25, I am writing to alert you to subjects which I intend to cover at your hearing. During our courtesy meeting you noted your appreciation of this advance notice. This is the third and final letter in this series.

The decisions by the Supreme Court not to hear cases may be more important than the decisions actually deciding cases. There are certainly more of them. They are hidden in single sentence denials with no indication of what they involve or why they are rejected. In some high profile cases, it is apparent that there is good reason to challenge the Court's refusal to decide.

The rejection of significant cases occurs at the same time the Court's caseload has dramatically decreased, the number of law clerks has quadrupled, and justices are observed lecturing around the world during the traditional three-month break from the end of June until the first Monday in October while other Federal employees work 11 months a year.

During his Senate confirmation hearing, Chief Justice John G. Roberts, Jr., said the Court "could contribute more to the clarity and uniformity of the law by taking more cases." The number of cases decided by the Supreme Court in the 19th century shows the capacity of the nine Justices to decide more cases. According to Professor Edward A. Hartnett: "... in 1870, the Court had 636 cases on its docket and decided 280; in 1880, the Court had 1,202 cases on its docket and decided 365; and in 1886, the Court had 1,396 cases on its docket and decided 451." The downward trend of decided case is noteworthy since 1985 and has continued under Chief Justice Roberts' leadership. The number of signed opinions decreased from 161 in the 1985 term to 67 in the 2007 term.

It has been reported that seven of the nine justices, excluding Justices Stevens and Alito, assign their clerks to what is called a "cert. pool" to review the thousands of petitions for certiorari. The clerk then writes and circulates a summary of the case and its issues suggesting justices' reading of cert. petitions is, at most, limited.

At a time of this declining caseload, the Supreme Court has left undecided circuit court splits of authority on many important cases such as:

(1) The necessity for an agency head to personally assert the deliberative process privilege;

(2) Mandatory minimums for use of a gun in drug trafficking;

(3) Equitable tolling of the Federal Tort Claims Act's statute of limitations period;

(4) The standard for deciding whether a Chapter 11 bankruptcy may benefit from executory contracts;

(5) Construing the honest services provisions of fraud law; and

(6) The propriety of a jury consulting the Bible during deliberations.

One procedural change for the Court to take more of these cases would be to lower the number of justices required for cert. from four to three or perhaps even to two.

Of perhaps greater significance are the high-profile, major constitutional issues which the court refuses to decide involving executive authority, congressional authority and civil rights. A noteworthy denial of cert. occurred in the Court's refusal to decide the constitutionality of the Terrorist Surveillance Program which brought into sharp conflict Congress' authority under Article I to establish the exclusive basis for wiretaps under the Foreign Intelligence Surveillance Act with the President's authority under Article II as Commander in Chief to order warrantless wiretaps.

That program operated secretly from shortly after 9/11 until a New York Times article in December 2005. In August 2006, the United States District Court for the Eastern District of Michigan found the program unconstitutional. In July 2007, the Sixth Circuit reversed 2-1, finding lack of standing. The Supreme Court then denied certiorari.

The dissenting opinion in the Sixth Circuit demonstrated the flexibility of the standing requirement to provide the basis for a decision on the merits. Judge Gilman noted, "the attorney-plaintiffs in the present case allege that the government is listening in on private person-to-person communications that are not open to the public. These are communications that any reasonable person would understand to be private. After analyzing the standing inquiry under a recent Supreme Court decision, Judge Gilman would have held that, '[t]he attorney-plaintiffs have thus identified concrete harms to themselves flowing from their reasonable fear that the TSP will intercept privileged communications between themselves and their clients. On a matter of such importance, the Supreme Court could at least have granted certiorari and decided that standing was a legitimate basis on which to reject the decision on the merits."

On June 29, 2009, the Supreme Court refused to consider the case captioned *In re Terrorist Attacks on September 11, 2001*, in which the families of the 9/11 victims sought damages from Saudi Arabian princes personally, not as government actors, for financing Muslim charities knowing those funds would be used to carry out Al Qaeda jihads against the United States. The plaintiffs sought an exception to the sovereign immunity specified in the Foreign Sovereign Immunities Act of 1976. Plaintiffs' counsel had developed considerable evidence showing Saudi complicity. Had the case gone forward, discovery proceedings had the prospect of developing additional incriminating evidence.

My questions are:

(1) Do you agree with the testimony of Chief Justice Roberts at his confirmation hearing that the Court "could contribute more to clarity and uniformity of the law by taking more cases?"

(2) If confirmed, would you favor reducing the number of justices required to grant petitions for certiorari in circuit split cases from four to three or even two?

(3) If confirmed, would you join the cert. pool or follow the practice of Justices Stevens and Alito in reviewing petitions for cert. with the assistance of your clerks?

(4) Would you have voted to grant certiorari in the case captioned *In re Terrorist Attacks on September 11, 2001*?

(5) Would you have voted to grant certiorari in *A.C.L.U. v. N.S.A.*—the case challenging the constitutionality of the Terrorist Surveillance Program?

Sincerely,

ARLEN SPECTER.

U.S. SENATE,

Washington, DC, June 15, 2009.

Hon. SONIA SOTOMAYOR,  
c/o The Department of Justice,  
Washington, DC.

DEAR JUDGE SOTOMAYOR: When we concluded our meeting which lasted more than an hour, I commented that I would be writing to you on other subjects which I intended to cover at your hearing, and I appreciated your response that you would welcome such advance notice.

In the confirmation hearing for Chief Justice Roberts, there was considerable discussion about the adequacy of congressional fact finding to support legislation. This issue is again before the Supreme Court on the reauthorization of the Voting Rights Act where the legislation is challenged on the ground that there is an insufficient factual record. At our hearing, I would like your views on what legal standards you would apply in evaluating the adequacy of a Congressional record. In the 1968 case *Maryland v. Wirtz*, Justice Harlan's rationale would uphold an act of Congress where the legislature had a rational basis for reaching a regulatory scheme. In later cases, the Court has moved to a "congruence and proportionality standard."

In advance of the hearing for Chief Justice Roberts by letter dated August 8, 2005, I wrote him in part: "members of Congress are irate about the Court's denigrating and, really, disrespectful statements about Congress's competence. In *U.S. v. Morrison*, Chief Justice Rehnquist, speaking for five members of the Court, rejected Congressional findings because of 'our method of reasoning'. As the dissent noted, the Court's judgment is 'dependent upon a uniquely judicial competence' which implicitly criticizes a lesser quality of Congressional competence." In *Morrison*, there was an extensive record on evidence establishing the factual basis for enactment of the Violence Against Women legislation. In dissent, Justice Souter noted "... the mountain of data assembled by Congress here showing the effects of violence against women on interstate commerce," and added: "The record includes reports on gender bias from task forces in 21 states and we have the benefit of specific factual finding in eight separate reports issued by Congress and its committees over the long course leading to its enactment."

In a subsequent letter to Chief Justice Roberts dated August 23, 2005, I wrote concerning *Alabama v. Garrett* where Title I of the Americans with Disabilities Act was based on task force field hearings in every state attended by more than 30,000 people including thousands who had experienced discrimination with roughly 300 examples of discrimination by state governments.

Notwithstanding those findings, the Garrett Court concluded in a five to four decision: "The legislative record of the Americans with Disabilities Act, however, simply fails to show that Congress did in fact identify a pattern of irrational state discrimination in employment against the disabled."

In another five to four decision, the Court in *Lane v. Tennessee* concluded Title II of the Americans with Disabilities Act met the "congruence and proportionality standard". There, Justice Scalia dissented attacking the "congruence and proportionality standard" calling it a "flabby test" and an "invitation to judicial arbitrariness and policy driven decision making" adding: "Worse still, it casts this Court in the role of Congress's taskmaster. Under it, the courts (and ultimately this Court) must regularly check Congress's homework to make sure that it has identified sufficient constitutional violations to make its remedy constitutional and proportional. As a general

matter, we are ill-advised to adopt or adhere to constitutional rules that bring us into conflict with a coequal branch of Government."

During the confirmation hearing of Chief Justice Roberts, he testified extensively in favor of the Court's deferring to Congress on fact finding. In response to questions from Senator DeWine, he testified: "... The reason that congressional fact finding and determination is important in these cases is because the courts recognize that they can't do that. Courts can't have, as you said, whatever it was, the 13 separate hearings before passing particular legislation. Courts—the Supreme Court can't sit and hear witness after witness after witness in a particular area and develop that kind of a record. Courts can't make the policy judgments about what type of legislation is necessary in light of the findings that are made" ... "We simply don't have the institutional expertise or the resources or the authority to engage in that type of a process. So that is sort of the basis for the deference to the fact finding that is made. It's institutional competence. The courts don't have it. Congress does. It's constitutional authority. It's not our job. It is your job. So the defense to congressional findings in this area has a solid basis."

In response to my questioning, Chief Justice Roberts said: "And I appreciate very much the differences in institutional competence between the judiciary and the Congress when it comes to basic questions of fact finding, development of a record, and also the authority to make the policy decisions about how to act on the basis of a particular record. It's not just disagreement over a record. It's a question of whose job it is to make a determination based on the record" ... "as a judge that you may be beginning to transgress into the area of making a law is when you are in a position of reevaluating legislative findings, because that doesn't look like a judicial function."

The Supreme Court heard oral argument in Northwest Austin Municipal Utility District v. Holder on April 29, 2009 involving the sufficiency of the Congressional record on reauthorizing the Voting Rights Act. While too much cannot be read into comments by justices at oral argument, Chief Justice Roberts' statements suggested a very different attitude on deference to Congressional fact finding than he expressed at his confirmation hearing. Referring to the argument that "... action under Section 5 has to be congruent and proportional to what it's trying to remedy," Justice Roberts said that: "... one-twentieth of 1 percent of the submissions are not precleared. That, to me, suggests that they are sweeping far more broadly than they need to, to address the intentional discrimination under the Fifteenth Amendment." Chief Justice Roberts went on to say: "Well, that's like the old—you know, it's the elephant whistle. You know, I have this whistle to keep away the elephants. You know, well, that's silly. Well, there are no elephants, so it must work. I mean if you have 99.98 percent of these being precleared, why isn't that reaching far too broadly."

As a factual basis for the 2007 Voting Rights Act, Congress heard from dozens of witnesses over ten months in 21 different hearings. Applying the approach from Chief Justice Roberts' continuation hearing, that would appear to satisfy the "congruence and proportionality standard".

My questions are:

1. Would you apply the Justice Harlan "rational basis" standard or the "congruence and proportionality standard"?

2. What are your views on Justice Scalia's characterization that the "congruence and proportionality standard" is a "flabby test"

and "an invitation to judicial arbitrariness and policy driven decision making"?

3. Do you agree with Chief Justice Rehnquist's conclusion that the Violence Against Women legislation was unconstitutional because of Congress's "method of reasoning"?

4. Do you agree with the division of constitutional authority between Congress and the Supreme Court articulated by Chief Justice Roberts in his responses cited in this letter to questions posed at his hearing by Senator DeWine and me?

Sincerely,

ARLEN SPECTER.

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, June 25, 2009

Hon. SONIA SOTOMAYOR,  
c/o The Department of Justice,  
Washington, DC.

DEAR JUDGE SOTOMAYOR: As noted in my letter to you dated June 15, 2009, I am writing to alert you to another subject which I intend to cover at your hearing. I appreciate your comment at our meeting that you welcome such advance notice.

In an electronic era where the public obtains much, if not most, of its news and information from television, there is a strong case in my judgment that the Supreme Court of the United States should have its public proceedings televised just as the United States House of Representatives and United States Senate are televised.

It is well established that the Constitution guarantees access to judicial proceedings to the press and the public. In 1980, the Supreme Court relied on this tradition when it held in *Richmond Newspapers, Inc. v. Virginia*, that the right of a public trial belongs not just to the accused but to the public and the press as well. The Court noted that such openness has "long been recognized as an indisputable attribute of an Anglo-American trial."

The value of transparency was cogently expressed by Chief Justice William Howard Taft who said: "Nothing tends more to render judges careful in their decision and anxiously solicitous to do exact justice than the consciousness that every act of theirs is subject to the intelligent scrutiny of their fellow men and to candid criticism."

In the same vein, Justice Felix Frankfurter said: "If the news media would cover the Supreme Court as thoroughly as it did the World Series, it would be very important since 'public confidence in the judiciary hinges on the public perception of it.'"

To give modern-day meaning, the term "press" used in *Richmond Newspapers* would include television. Certainly Justice Frankfurter's use of the term "media" would include television in today's world. Televising the Supreme Court's public proceedings would provide the "scrutiny" sought by Chief Justice Taft.

Justices of the Supreme Court have been frequently televised, including Chief Justice Roberts and Justice Stevens appearance on "Prime Time" ABC TV, Justice Ruth Bader Ginsburg's interview on CBS by Mike Wallace, Justice Breyer's participation in Fox News Sunday and the debate between Justice Scalia and Justice Breyer filmed and available for viewing on the web.

Many of the justices have commented favorably on televising the Court. Justice Stevens, in an article by Henry Weinstein on July 14, 1989 said he supported cameras in the Supreme Court and told the annual Ninth Circuit Judicial Conference at about the same time that, "In my view, it is worth a try." During Justice Breyer's confirmation hearing in 1994, he indicated support for televising Supreme Court proceedings. He has

since equivocated, but noted that it would be a wonderful teasing device.

In December 2000, Marjorie Cohn's article noted Justice Ruth Bader Ginsburg's support of camera coverage so long as it was gavel to gavel. Justice Alito in his Senate confirmation hearing said that as a member of the Third Circuit Court of Appeals he voted to admit cameras; but added that it would be presumptive of him to take a final position before he had consulted with his colleagues, if confirmed, promising to keep an open mind. Justice Kennedy, according to a September 10, 1990 article by James Rubin, told a group of visiting high school students that cameras in the Court were "inevitable." He has since equivocated, stating that if any of his colleagues raise serious objections, he would be reluctant to see the Court televised. Chief Justice Roberts said in his confirmation hearing that he would keep an open mind on the subject.

Recognizing the sensitivity of justices to favor televising the Court in the face of a colleague's objection, there may be a new perspective with Justice Souter's retirement since he expressed the most vociferous opposition: "I can tell you the day you see a camera come into our courtroom, it is going to roll over my dead body."

In the 109th and 110th Congresses, with several bipartisan co-sponsors, I introduced legislation providing for televising public Supreme Court proceedings. Both bills were reported favorably out of the Judiciary Committee, but were never taken up by the full Senate. Sensitive to separation of powers and recognizing the authority of the Supreme Court to invalidate any such legislation, it should be noted that there are analogous directives from Congress to the Court on procedural/administrative matters such as setting the first Monday of October as the beginning of the Court's term, requiring six sitting justices to form a quorum and establishing nine as the number of Supreme Court justices. In May 2007, Associate Professor Bruce Peabody of the Political Science Department of Fairleigh Dickinson wrote an article in the *Journal on Legislation* concluding the proposed legislation was constitutional.

There is obviously enormous public interest in Supreme Court proceedings. When the case of *Bush v. Gore* was argued, streets around the Supreme Court building were filled with television trucks, although no camera was admitted inside the chamber. Shortly before the argument, Senator Biden and I wrote to Chief Justice Rehnquist urging that the proceedings be televised and received a prompt reply in the negative; but the Supreme Court did break recede by releasing an audiotape when the proceedings were over and the Court has since intermittently made audiotapes available. Such audiotapes are obviously no substitute for television, but are a step in the right direction.

The keen public interest is obvious since the Supreme Court decides the cutting-edge questions of the day such as: who will become president; congressional power; executive power; defendants' rights—habeas corpus—Guantanamo; civil rights—voting rights—affirmative action; abortion.

In 1990, the Federal Judicial Conference authorized a three-year pilot program allowing television coverage of civil proceedings in six federal district courts and two federal circuit courts. The program began in July 1991 and ran through December 31, 1994. The Federal Judicial Center monitored the program and issued a positive final evaluation. The Judicial Center concluded: "Overall attitudes of judges toward electronic media coverage of civil proceedings were initially neutral and became more favorable after experience



under the pilot program." The Judicial Center also said: "Judges and attorneys who had experience with electronic media coverage under the program generally reported observing small or no effects of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice."

I am especially interested in your experience when a trial was televised in your courtroom under the pilot program.

My questions are: (1) Do you agree with Justice Stevens that televising the Supreme Court is "worth a try"? (2) Do you agree with Justice Breyer that televising judicial proceedings would be a wonderful teaching device? (3) Do you believe, as expressed by Justice Kennedy, that televising the Supreme Court is "inevitable"? (4) What effect, if any, did televising the trial in your Court have on the lawyers, witnesses, jurors and you? (5) Do you think that televising the trial in your Court was useful to inform the public on the way the judicial system operates?

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. Mr. President, when the Federalist Papers were written, the authors said that the Supreme Court was the least dangerous branch. I think if the Framers had seen the status of events in the year 2009, they might have written that the Supreme Court, the Supreme Court especially, was the least accountable branch—the least transparent branch.

For many years, I have urged that the Supreme Court be televised. Legislation which I have introduced has twice been voted out of committee, and it is pending again. I think this is an especially good time to take up the issue. The Congress has the authority to establish when the Supreme Court sits—the first Monday in October; what it takes to have a quorum; how many members there will be on the Court—contrast that to what President Roosevelt tried to do to expand the number to 15. We have authority on the timetable, under the Speedy Trial Act, to set time limits on habeas corpus, and it is my legal judgment that we have the authority to call on the Supreme Court to be televised.

The Supreme Court has the final word on that subject, as they do on all others, and could invalidate legislation on the grounds of separation of power. But in light of what is happening and the demand for greater transparency, the televising of the House, the televising of the Senate; the fact that recently the highest court in Great Britain has admitted television cameras, it is time that should occur.

With the departure of Justice Souter, assuming the confirmation of Judge Sotomayor, the major opponent to televising the Court will no longer be there. Justice Souter made the famous statement that the television cameras would roll in over his dead body. When the nominees have been questioned repeatedly, they have always been very concerned, almost to a person, about being solicitous of the views of others. I concede that Justice Souter's strong views might have been a considerable obstacle. Justice Stevens has said it is

worth a try. Justice Ginsburg said it would be fine if it were gavel to gavel. Other Justices have been televised. It is worth noting that the Federal Judicial Conference authorized a 3-year pilot program for six Federal district courts and two Federal circuit courts of appeals. The Judicial Center concluded:

Overall, attitudes of judges toward electronic media coverage of civil proceedings were initially neutral and became more favorable after experience under the pilot program. Judges and attorneys who had experience with electronic media coverage under the program generally reported observing small or no effects of camera presence or participants in the proceedings, courtroom decorum, or the administration of justice.

It is my suggestion it would be very healthy for our country to have a little sunshine come into the Supreme Court.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SPECTER. I ask unanimous consent for 2 additional minutes.

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

Mr. SPECTER. I think it would be very beneficial to have a little sunlight to come into the Supreme Court so there could be a public understanding as to how far the Supreme Court is going now on judicial legislation—that they are going beyond constitutional rights, that they are reaching into statutes such as the statute protecting women against violence, to declare it unconstitutional notwithstanding a voluminous record but based on the method of reasoning of Congress, as if our method of reasoning was deficient to theirs; or on the standard of congruence and proportionality, which is simply not understandable; or in the context of a workload which defies explanation, with so many circuit splits going undecided.

It may surprise people to know that it was not until 1981 that the Judiciary Committee proceedings on nominations were televised. Seeing what a great appearance it is today, and of how much value—this is really our only opportunity to speak to the Court, to speak to Chief Justice Roberts. Are you going back on your commitment that it is up to the Congress to decide facts on a congressional record? Why are you doing congruence and proportionality when no one understands it?

So while the judgment on Sonia Sotomayor, as I said initially, was easy for me to vote aye, there are many more perplexing issues that have emerged, especially what I perceive to be an institutional change here, with Senators substituting their own judgments and ideology for the traditional deference allotted to the President.

Before I yield the floor, Mr. President, I have been asked to read an addendum statement, if I may? It is an introduction for a letter from members of the Supreme Court bar in favor of Judge Sotomayor:

The Committee recently received a letter of support for Judge Sotomayor's nomina-

tion from over 45 regular practitioners at the Supreme Court including a number of former Solicitors General and Assistants to the Solicitor General. Among those who joined this letter are a number of highly respected Republican appointees such as Charles Fried, nominated by President Reagan to be Solicitor General; John Gibbons, the former Chief Judge for the Third Circuit Court of Appeals who was nominated by President Nixon; and Tim Lewis, nominated by President George H.W. Bush and confirmed as a Judge for the Third Circuit Court of Appeals.

I ask unanimous consent to have this letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Hon. PATRICK J. LEAHY,

*Chairman, U.S. Senate Committee on the Judiciary, Russell Senate Office Building, Washington, DC.*

Hon. JEFFERSON B. SESSIONS,

*Ranking Member, U.S. Senate Committee on the Judiciary, Russell Senate Office Building, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: As members of the Supreme Court Bar including those of us who have had the honor to represent the United States in the Court, as Solicitor General or members of the Solicitor General's professional staff—we respectfully support confirmation of Judge Sonia Sotomayor as an Associate Justice of the United States Supreme Court.

Judge Sotomayor would bring to the Court an impressive background in the law. As an Assistant District Attorney in New York for five years, she earned a reputation as a focused prosecutor. In her seventeen years as a federal judge, she demonstrated impartiality, clear thinking, and careful attention to the facts and issues before her. Her legal rulings are typically tailored to the facts and are respectful of precedent and the rule of law. Throughout her legal career, Judge Sotomayor has distinguished herself.

Judge Sotomayor's strong legal background and impressive career make her an extremely well-qualified nominee for the Supreme Court. We urge her speedy confirmation.

Sincerely,

Donald B. Ayer, Jones Day LLP; Deputy Attorney General, 1989-90; Principal Deputy Solicitor General, 1986-88.

Timothy S. Bishop, Mayer Brown LLP.

Richard P. Bress, Latham & Watkins LLP; Assistant to the Solicitor General, 1994-1997.

Louis R. Cohen, WilmerHale LLP; Deputy Solicitor General, 1986-88.

Drew S. Days III, Yale Law School; Solicitor General, 1993-96.

Walter Dellinger, O'Melveny & Myers LLP; Acting Solicitor General, 1996-97.

Samuel Estreicher, NYU School of Law; Jones Day LLP.

Bartow Farr, Farr & Taranto; Assistant to the Solicitor General, 1976-1978.

Meir Feder, Jones Day LLP.

Jonathan S. Franklin, Fulbright & Jaworski LLP.

David C. Frederick, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC; Assistant to the Solicitor General, 1996-2001.

Andrew L. Frey, Mayer Brown LLP; Deputy Solicitor General, 1973-1986.

Charles Fried, Harvard Law School; Solicitor General, 1985-1989.

Kenneth S. Geller, Mayer Brown LLP; Deputy Solicitor General, 1979-1986.

John J. Gibbons, Gibbons PC; former Chief Judge, U.S. Court of Appeals for the Third Circuit.

Jamie S. Gorelick, WilmerHale LLP; Deputy Attorney General.

Jeffrey T. Green, Sidley Austin LLP.

Caitlin J. Halligan, Weil, Gotshal & Manges LLP; New York Solicitor General, 2001–2007.

Pamela Harris, Georgetown University Law Center.

George W. Jones, Jr., Sidley Austin LLP; Assistant to the Solicitor General, 1980–1983.

Pamela S. Karlan, Stanford Law School.

Michael K. Kellogg, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC; Assistant to the Solicitor General, 1987–1989.

Douglas W. Kmiec, Pepperdine Law School.

Jeffrey A. Lamken, Baker Botts LLP; Assistant to the Solicitor General, 1997–2004.

Timothy K. Lewis, Schnader Harrison Segal & Lewis LLP; Judge, U.S. Court of Appeals for the Third Circuit, 1992–1999.

Rory K. Little, U.C. Hastings College of Law.

Robert A. Long, Covington & Burling LLP; Assistant to the Solicitor General, 1990–1993.

Deanne E. Maynard, Morrison & Foerster LLP; Assistant to the Solicitor General, 2004–2009.

Patricia Millett, Akin Gump Strauss Hauer & Feld, LLP; Assistant to the Solicitor General, 1996–2007.

Randolph D. Moss, WilmerHale LLP.

Carter G. Phillips, Sidley Austin LLP; Assistant to the Solicitor General, 1981–1984.

Andrew J. Pincus, Mayer Brown LLP; Assistant to the Solicitor General, 1984–1988.

E. Joshua Rosenkranz, Orrick, Herrington & Sutcliffe LLP.

Charles A. Rothfeld, Mayer Brown LLP; Assistant to the Solicitor General, 1984–1988.

Gene C. Schaerr, Winston & Strawn LLP.

Joshua Schwartz, George Washington University Law School; Assistant to the Solicitor General, 1981–1985.

Virginia A. Seitz, Sidley Austin LLP.

Stephen M. Shapiro, Mayer Brown LLP; Deputy Solicitor General, 1981–1983.

Paul M. Smith, Jenner & Block LLP.

Jerold S. Solovy, Jenner & Block LLP.

Kathleen M. Sullivan, Quinn Emanuel Urquhart Oliver & Hedges LLP & Stanford Law School.

Richard Taranto, Farr & Taranto; Assistant to the Solicitor General, 1986–1989.

Laurence H. Tribe, Harvard Law School.

Alan Untereiner, Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP.

Seth P. Waxman, WilmerHale LLP; Solicitor General, 1997–2001.

Christopher J. Wright, Wiltshire & Grannis LLP; Assistant to the Solicitor General, 1984–1994.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, today is an auspicious day. I have had 25 years of service now to the Senate. This is one of those moments when what we do will be recorded in history forever—the opportunity to nominate a distinguished jurist to the highest judicial post in this country.

I rise to express my strong support for President Obama's nomination of a distinguished jurist, Sonia Sotomayor, to become a Supreme Court Justice of the United States, confirming the continuity of our duty to the Constitution and to fairness to all the people in our country, and that obedience to the law continues uninterrupted.

In Newark, NJ, there exists a venerated courthouse that bears my name. On the entrance to this courthouse there is an inscription that says:

The true measure of a democracy is its dispensation of justice.

That summarizes my feeling about our beloved country. I authored that quote after considerable thought, and I truly believe it reflects a principal value upon which our Nation was founded. We must scrupulously insist that these values endure throughout our government and our legal system and particularly in our Nation's highest Court.

Based on her history, my meeting with Judge Sotomayor, and her testimony before the Senate Judiciary Committee, I have no doubt that if confirmed, Judge Sotomayor will pursue the fair, wise, and unbiased dispensation of justice. That is why I believe we must confirm Judge Sotomayor's appointment without delay.

When I had a private meeting with her, she confirmed her unwavering commitment to the equity of our American justice system, her knowledge of the law, and her recognition of the enormous responsibility she has to fulfill to our country.

I conveyed to her the excitement we are hearing in my State of New Jersey that President Obama's nominee grew up in a poor urban environment, in the Bronx—a close neighbor geographically with New Jersey with a similar tradition of a people starting at the bottom and succeeding through determination, education, and hard work.

We also discussed a shared admiration for Justice Benjamin Cardozo, who was renowned for his integrity and his diligence in applying precedent. I served for several years on the board of a law school bearing Justice Cardozo's name, where I saw the achievements of renowned legal scholars. I feel so deeply that Sonia Sotomayor will be remembered one day as an outstanding member of the most revered and respected Court in the world.

During our meeting, Judge Sotomayor and I came to realize we had a common thread through our personal histories. The phrase “only in America” truly applies to Judge Sotomayor, and I can say that with a special understanding. Humble beginnings were the touchstones that enabled each of us to achieve beyond any parent's dream.

I grew up in Paterson, NJ, a hard-scrabble mill town. My family lacked resources but left an inheritance of values with no valuables. My parents were brought to America by my grandparents seeking an opportunity to be free and to make a living. We were taught that we were obligated, if we had the opportunity, to make sure we gave something back to the community in which we lived.

Judge Sotomayor's family moved here from Puerto Rico, and she grew up in a housing project where she saw, up front and close, the struggles of people living in poor areas. Like my father, Judge Sotomayor's dad died at a very young age, and her mother, like mine, became a widow at a very young age. She became a single mother, like mine.

Judge Sotomayor's mother had to raise her and her brother in the face of racial, social, and financial adversity. In fact, her mother worked two jobs to support her children.

Despite the many difficulties, Judge Sotomayor has reached the highest rung of our society. At Princeton and also at Yale Law School, she achieved academic honors, and then she worked in the Manhattan District Attorney's Office. As a district attorney, she prosecuted murder, robbery, and assault cases, among others. From the DA's office she became a corporate litigator and rose to partner at a prestigious New York law firm. While there, she threw herself into her job and became an expert on trademark and intellectual property law. Her career then led her to the bench, where she has been a Federal judge for the last 17 years. That is a pretty good time for testing.

The truth is, Judge Sotomayor comes to this nomination process with more judicial experience than any Supreme Court nominee in a century. Think about it when the detractors try to find ways to sully her reputation. But before she became a judge and long before she appeared before the Judiciary Committee, where she demonstrated a remarkable command of the law and comfort with her knowledge, Judge Sotomayor carved out a reputation as a brilliant legal mind.

Yet, in one of the most scurrilous campaigns against a judicial nominee I have ever witnessed, the partisan attack mills begin to churn out piles of distortions and half-truths about Judge Sotomayor right after the President picked her to be his nominee. They had their gunsights settled on whoever it might be. But in this instance, we have one of the more distinguished scholars of the law to be able to be honored and to honor us at the same time. They tried to paint her as a radical. They even tried to paint her as a bully. They even tried to paint her as lacking intelligence. But there was absolutely no place in her judicial record to use anything serious against her. They went down the path of personal destruction; it has become a habit around here. They picked through her speeches. They zeroed in on one sentence here and another there to try to discredit her as nothing more than an affirmative-action choice.

I want to get one thing straight. Judge Sotomayor represents the best this country has to offer. She is a role model for all Americans, and she is, deservedly so, a source of great pride for the Latino community. By any standard, Judge Sotomayor is exceptionally well qualified to serve as an Associate Justice of the Supreme Court. With 17 years of judicial experience and 12 of those on the Second Circuit Court of Appeals, she is well equipped for the task of Supreme Court Justice.

If confirmed, she will be the only member of the Supreme Court who has previously worn a trial judge robe. The experience should not be overlooked.

Right now, Justice Souter, whom Judge Sotomayor would replace on the Court, is the only Justice with a trial court background.

Earlier this year, before Justice Souter had even announced his retirement, Chief Justice Roberts said that the Court's dearth of trial bench knowledge was, here I quote, "an unfortunate circumstance" and a "flaw." Trial court judges handle civil and criminal cases and they see firsthand the impact of the law on ordinary Americans.

While on the trial bench, Judge Sotomayor handled 450 cases. Put directly, her experience is varied, multifaceted. What is more, she was appointed to the bench by both Democratic and Republican Presidents. Did they have bad judgment? I think not. I think not. Her record proved that. On any fair examination of her judicial record, including more than 400 published opinions as a Federal appellate court judge, it shows she is balanced in her approach, takes in all the facts, and follows precedent. Her legal reasoning has been consistently admired for applying the law fairly, and her opinions reveal nothing more than a strict adherence to the rule of law.

The American Bar Association has given her its highest rating, calling her "well qualified."

That is a distinction of significant importance.

This nomination is an incredibly important moment for our country. The Supreme Court makes decisions that determine the very contours of our country's future. It has a direct say on the rights or lack of rights that our children and grandchildren will have.

The Court decides whether big corporations have a stronger claim to justice than the little guy. The Court sets the table for government power, whether it goes unchecked or is responsible to the people. That is the domain. Critical. The rulings of the Court affect everyday people from New Jersey and everyday Americans.

The Framers of the Constitution created a system of checks and balances with three coequal branches. No one understands that better than Judge Sotomayor, who said during her confirmation hearings, "The task of a judge is not to make law, it is to apply the law."

After consideration, careful consideration, I conclude that I must vote "yes" on the confirmation of Judge Sotomayor. Judge Sotomayor has consistently shown judicial restraint and she will prove to be a strong and independent voice on that Court.

Like many Americans, I am sure I will not always agree with every decision she makes. But I have the comfort of knowing, of believing, that she will resolve legal questions with an open mind, will put the rule of law above any personal beliefs.

Her judicial record is unparalleled. Her professional and academic credentials are impeccable, and her story is

inspiring. I watched and listened carefully to what she had to say during her confirmation hearings and when we met in person.

Her life has been one of breaking down barriers. I look forward to seeing her break one more. For those reasons I am honored to support Judge Sotomayor's breakthrough nomination.

I hope my colleagues will step up and vote their conscience and vote their beliefs and not inject any of the insignificant things we have seen discussed all over the place until this. I hope they will confirm her in an overwhelming majority, which is what she and the country deserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DODD. Mr. President, I rise in strong support of the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

I wish to thank PAT LEAHY, my seatmate here in the Senate, the Chairman of the Judiciary Committee, for his leadership. Let me also thank JEFF SESSIONS, who is the ranking Republican on the committee, and all members of the committee.

Those are pretty important jobs they have. Obviously they are considering nominees for the district court, the appellate court. But moments when you consider a nominee to the Supreme Court do not happen every day and are pretty significant moments.

I commend the committee for the speed with which they handled this. A lot of time these matters can get tied up for weeks on end, as we have seen in prior years. But I particularly commend PAT LEAHY, who does a great job chairing the Judiciary Committee, and all members for their work in this area.

Article II of the Constitution gives the Senate an awesome responsibility for providing advice and consent on judicial nominations. Those who we confirm are in a lifetime position as one of the nine men and women who will have the ability to literally shape every phase of American law and society.

Other than authorizing war or amending the U.S. Constitution, this body has no more important power than the one we exercise when we choose to confirm a nominee to sit on the U.S. Supreme Court.

Clearly, then, the Constitution demands that we subject nominees to very close scrutiny. But it does not tell us how. Each Senator must determine

for himself or herself the appropriate criteria.

Over the years I have been here, I have had the privilege of listening, not as a member of the Judiciary Committee, but as a Member of this body, to debates, and there have been some tremendous ones over the years on various nominees. Most have been confirmed, some have not. But it is usually a robust debate, an important debate, and the scrutiny of these nominees is the highest any nominee for any office receives.

I have always relied on a three-part test.

The first test I apply, and have done this across the board over the years: Does the nominee have the technical competence and legal skills to do the job?

Second: Does the nominee have the proper character and temperament to serve on the highest Court of our land?

And, third: Does the nominee's record demonstrate respect for and adherence to the principle underlying our legal system—that is, equal justice for all?

I am convinced, without any doubt or hesitation, that Judge Sotomayor passes all three tests with distinction.

As to Judge Sotomayor's competence: Her résumé is that of experienced and accomplished jurist, one who will take her seat with more bench experience, I might point out, as I am sure others have, than any other Justice currently serving on the U.S. Supreme Court.

She graduated from Yale Law School in my home State of Connecticut, has been a prosecutor and private attorney, and spent 17 years on the Federal bench as both a district court judge and an appellate court judge.

As to Judge Sotomayor's character: Her long list of enthusiastic recommendations and her terrific performance before the Judiciary Committee revealed her to be a remarkable woman of deep integrity. Her incredible life story, rising from a housing project in the Bronx to the height of American jurisprudence, is truly an inspiration. And, of course, as someone who would be the first Latina and third woman to serve on the Court, Judge Sotomayor is an historic figure.

As to Judge Sotomayor's legal philosophy: Her writings and her thoughtful answers to difficult questions raised by our colleagues on the Judiciary Committee make it clear that Judge Sotomayor is committed to the principle of equality that forms the foundation of America's system of jurisprudence.

For Judge Sotomayor, as for any nominee, that is enough to earn my vote, regardless of what I think about any particular decision. I voted to confirm Chief Justice Roberts, much to the consternation of people in my own party and others who felt we should object because we did not agree with Judge Roberts' decisions in a number of cases. But I applied my three-part

test and Justice Roberts passed. I have applied that test over the years.

So while I have not agreed with every decision that the Chief Justice has taken during his tenure on the bench, I would still tell you it was a good choice, despite my disagreement with some of his decisions. It is the kind of quality you want on the Supreme Court.

I worry deeply in this body that if we start taking standards to apply to the nominees for the Supreme Court, such as we appear to be doing, I think we do damage to the tradition we must uphold in this body of applying standards that go far beyond our particular concerns about decisions here and there, or to listen to constituency groups to such a degree that they dominate the vote patterns here in the Senate.

Frankly, I do not think I am telling any of my colleagues anything they do not know already. I do not think anybody in this Chamber believes that she is incompetent or temperamentally unsuited for the job, or that she does not believe in equal justice under the law.

The actual debate, however, has focused not on the nominee's enormous body of exemplary work but a few examples from her career, selected for their ability to create controversy.

Out of thousands of decisions—and that is not hyperbole; she has been involved in thousands of decisions—if it were not amusing to me it would be disturbing to me. There are eight cases that were the subject of debate in her nomination, eight cases out of thousands in which she rendered an opinion either as a joint participant in the opinion or as the sole decider in the case.

So out of thousands of cases, eight items were brought up. Frankly, you could do that with anybody. But someone who has had 17 years on the bench, going through thousands of cases, if that is the basis for being against this nominee, I do not know if anyone can ever pass the test here if that were the case, if you are looking for people with experience and temperament and ability to judge.

She should not be confirmed just because of her ethnicity. As someone who is proud that he speaks the Spanish language, served the Peace Corps in Latin America, in the Dominican Republic, and knows the area where Judge Sotomayor grew up in the Bronx, her nomination should not rest solely on ethnicity. And she would be offended if she thought it were the case.

But it also is a moment of celebration as well, that we in this country respect diversity of our population. Many have said this is a remarkable story, and I appreciate the point they are trying to make. But it is not terribly remarkable, it is America. And in America that story is not remarkable. That is the great brilliance of our country. We have a President of the United States who was raised by a single mother under difficult circumstances.

Bill Clinton, whom we are talking about today because of his heroic efforts to help release the two women who were held in North Korea, had an equally compelling story. Ronald Reagan had a compelling story.

There are many people who have risen to incredible heights in our country in success in the private and public sector who have come from similar circumstances as Judge Sotomayor. It is a great tribute to our country that people such as Judge Sotomayor can achieve the success she has because we celebrate it in our country.

So it is more a reflection I think of today's political climate than it is on this terrific nominee who we have the privilege of voting for. The legal and political issues raised during her confirmation hearings are complex and interesting, as they should be. But the decision currently facing the Senate is not a hard call, in my view. I have been here when there have been hard calls. This is not a hard call. This ought to be an easy call for Members here.

She is a brilliant jurist. She is a remarkable American. And she is going to make a fantastic Justice on the U.S. Supreme Court. I could not be prouder, when the time arrives, to cast my vote in favor of this nominee.

The Judiciary Committee has received letters of support from several State and local bar associations, including the New York City Bar, the Women's Bar Association of the State of New York, and the Connecticut Hispanic Bar Association.

The Connecticut Hispanic Bar Association, which honored Judge Sotomayor in 1998 with its Achievement Award at its Annual Awards Dinner, wrote:

Since being appointed to the bench, Judge Sotomayor has compiled an exemplary and distinguished record. She has earned a stellar reputation as a defender of the rule of law and praise for her thoughtful and thorough written opinions.

I ask unanimous consent these letters be printed in the RECORD.

#### EXHIBIT 1

#### WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK, New York, NY, July 1, 2009.

Senator PATRICK J. LEAHY,  
U.S. Senate, Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR: As president of the Women's Bar Association of the State of New York (WBASNY), I am pleased to present the attached statement in support of the confirmation of Judge Sonia Sotomayor—a WBASNY member—to the United States Supreme Court. Her outstanding experience, her philosophy of judicial moderation, and her distinctive perspective, as demonstrated by her legal opinions, make her superbly qualified for this service.

I respectfully request that WBASNY be given the opportunity to testify about Judge Sotomayor during the U.S. Senate confirmation hearings.

Sincerely,

CYNTHIA SCHROCK SEELEY.

#### WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

#### STATEMENT IN SUPPORT OF JUDGE SONIA SOTOMAYOR

June 30, 2009

#### INTRODUCTION

The Women's Bar Association of the State of New York ("WBASNY"), representing more than 3,800 attorneys, judges, and law students from across the State of New York, is honored and proud to support President Obama's nomination of Second Circuit Judge Sonia Sotomayor—a WBASNY member—to the United States Supreme Court. Judge Sotomayor's wealth of experience, keen intelligence, and moderate judicial philosophy make her extremely well-qualified to serve as an Associate Justice of the Supreme Court.

#### OUTSTANDING EXPERIENCE

Judge Sotomayor has superb educational credentials and more than sixteen years' experience as a federal judge. After graduating summa cum laude from Princeton University, she served as an editor of *The Yale Law Journal* while pursuing her law degree at Yale Law School. For the first five years of her career, Judge Sotomayor was an assistant district attorney for the County of New York, prosecuting such crimes as murder, robbery, child abuse, police misconduct, and fraud. New York District Attorney, Robert M. Morgenthau, calls her a "fearless and effective prosecutor," who "believes in the rule of law." After leaving the district attorney's office, Judge Sotomayor worked for a private law firm as a corporate litigator, where she handled complex commercial cases, both international and domestic. Her work focused on the areas of intellectual property, real estate, employment, banking, contracts, and agency law.

In October 1992, Judge Sotomayor was appointed to the U.S. District Court for the Southern District of New York by President Bush and became the youngest judge on the Court. In her six years as a district court judge, Judge Sotomayor presided over approximately 450 cases, earning a reputation as a "sharp" and "fearless" jurist. She was elevated to the U.S. Court of Appeals for the Second Circuit in 1998 by President Clinton, where she has participated in more than 3000 appeals and written approximately 400 published opinions. Her colleagues on the Second Circuit bench have praised her as "a brilliant lawyer and a very sound and careful judge" who is "fair and decent in all her dealings."

#### JUDICIAL PHILOSOPHY—A PASSION FOR MODERATION

Judge Sotomayor's judicial opinions faithfully adhere to applicable legal precedents, defer to legislative and regulatory decision-making, and carefully examine the facts of each case. Because she applies the same principled analysis to each matter she reviews, her conclusions do not fall into superficially predictable categories. Judge Sotomayor's application of the law hews closely to established law and precedents. Hers is a clear and consistent voice for moderation that demonstrates an appreciation for the far-reaching implications of appellate decisions. Essentially limiting the scope of her own power, Judge Sotomayor is a model of judicial restraint.

In dissenting from the Second Circuit's reversal of a district court decision that dismissed an age discrimination claim brought by a seventy-year-old clergyman, Judge Sotomayor wrote that the majority opinion "violat[ed] a cardinal principle of judicial restraint by reaching unnecessarily the question of [the Religious Freedom Restoration Act's] constitutionality" when the question

had not been presented to the Court.” Similarly, upon reviewing an immigration asylum case that addressed China’s restrictive family planning policies, Judge Sotomayor wrote that the majority opinion “mark[ed] an extraordinary and unwarranted departure from our longstanding principles of deference and judicial restraint.”

Judge Sotomayor’s awareness of the long-range effects of judicial decisions undergirds her passion for judicial restraint. Addressing an immigration asylum claim brought by three women who had been subjected to female genital mutilation in their native Guinea, Judge Sotomayor wrote that a colleague’s analysis of continuing persecution claims was “unnecessary . . . may never need to be decided. . . [and] . . . could have far reaching implications in other types of cases.” Reviewing a Fourth Amendment claim of illegal search in the context of a plaintiff’s suit for money damages, Judge Sotomayor reminded her colleagues of the Supreme Court’s articulation of the applicable law: “[T]he Supreme Court has struck a careful balance between the vindication of constitutional rights and government officials’ ability to exercise discretion in the performance of their duties. Our case law, in subtle but important ways, has altered this balance . . . In the vast majority of cases, including this one, the particular phrasing of the standard will not alter the outcome . . . [y]et the effect in future cases may not always be so benign. . . . It is time to . . . reconcile our . . . analysis with the Supreme Court’s most recent, authoritative jurisprudence.”

#### DISTINCTIVE COMMON-SENSE PERSPECTIVE

Judge Sotomayor brings a distinctive common-sense perspective to the Court, and an appreciation of the differences among litigants’ individual attributes and experiences. In 2007, then-Senator Obama might have been describing Judge Sotomayor when he said, “Part of the role of the Court is . . . to protect people who may be vulnerable in the political process, the outsider, the minority, those who are vulnerable, those who don’t have a lot of clout.” While always adhering to established law and precedent, her opinions and decisions reveal a special sensitivity to challenges facing those whom WBASNY seeks to protect: women and other groups for whom the equal administration of justice has been elusive, such as immigrants, children, and the disabled.

Judge Sotomayor is eminently qualified for the Supreme Court without regard to gender. However, the members of WBASNY believe that her gender enhances her other stellar qualifications. Supreme Court Justice Ruth Bader Ginsburg recently stated that the Supreme Court needs another woman: “[T]here are perceptions that we have because we are women. . . . Women belong in all places where decisions are being made. I don’t say (the split) should be 50-50. It could be 60% men, 40% women, or the other way around. It shouldn’t be that women are the exception.” Similarly, Justice Sandra Day O’Connor stated, “Despite the encouraging and wonderful gains and the changes for women which have occurred in my lifetime, there is still room to advance and to promote correction of the remaining deficiencies and imbalances.” Addressing an audience of WBASNY members in 1999, Judge Sotomayor discussed the impact of her gender on her own jurisprudence: “Each day on the bench, I learn something new about the judicial process and its meaning, about being a professional woman in a world that sometimes looks at us with suspicion. . . . I can and do . . . aspire to be greater than the sum total of my experiences but I accept my limitations. I willingly accept that we who judge

must not deny the differences resulting from experience and gender but attempt . . . continuously to judge when those opinions, sympathies and prejudices are appropriate.”

Judge Sotomayor’s decisions reflect an understanding of “women’s issues” and how they are essentially human issues. Dissenting from an immigration decision, Judge Sotomayor wrote, “The majority concedes that both spouses suffer a ‘profound emotional loss’ as a result of a forced abortion or sterilization, but it never sufficiently explains why the harm of sterilization or abortion constitutes persecution only for the person who is forced to undergo such a procedure and not for that person’s spouse as well. . . . [T]he majority’s conclusion disregards the immutable fact that a desired pregnancy . . . necessarily requires both spouses to occur, and that the state’s interference with this fundamental right ‘may have subtle, far reaching and devastating effects’ for both husband and wife. The termination of a wanted pregnancy under a coercive population control program can only be devastating to any couple, akin, no doubt, to the killing of a child.”

In the same case, Judge Sotomayor addressed the Court’s obligation to consider the differences between Chinese asylum seekers and U.S. citizens when making assumptions about parties’ actions: “We simply have no foundation on which to conclude that all couples have the financial resources to escape at the same time, and as the government stated at oral argument, it is not uncommon for Chinese couples to separate and have one spouse go abroad in order to amass the necessary resources to bring over the other spouse. I believe the majority here is opining on a subject—imbued with potentially significant cultural differences—with which it has no expertise or empirical evidence.”

Judge Sotomayor has also demonstrated an understanding of the particular difficulties women and girls face in our society. In a case alleging discriminatory failure to promote and retaliatory discharge, Justice Sotomayor held that the plaintiff had failed to establish that she was discriminated against on either basis.” However, addressing the same employee’s claim of sexual harassment, Judge Sotomayor held that testimony that the woman’s supervisor repeatedly commented that “women should be barefoot and pregnant . . . [and that he] would stand very close to women when talking to them and would ‘look[ ] at [them] up and down in a way that’s very uncomfortable’” was sufficient to entitle the plaintiff to a jury trial on the question of whether she had been subjected to a hostile work environment.

In a case involving strip searches of young girls admitted to juvenile detention centers, Judge Sotomayor wrote that the majority failed adequately to consider “the privacy interests of emotionally troubled children,” most of whom “have been victims of abuse or neglect, and may be more vulnerable mentally and emotionally than other youths their age.” She cautioned, “We should be especially wary of strip searches of children, since youth ‘is a time and condition of life when a person may be most susceptible to influence and to psychological damage.’”

Dissenting from a dismissal of a claim that a school district had discriminated against an African American child in demoting him from first grade to kindergarten, Judge Sotomayor wrote, “I consider the treatment this lone black child encountered . . . to have been . . . unprecedented and contrary to the school’s established policies.” She found it “crucial” that the student as “the only black child in this classroom and one of the very few black students in the entire school.”

Addressing a claim brought by a father who was investigated by the Vermont Department of Social and Rehabilitation Services after his estranged wife accused him of sexually abusing his three-year-old son, Judge Sotomayor first noted that the U.S. Supreme Court has afforded constitutional protection to parents’ interest in the care, custody and management of their children, then addressed the “compelling governmental interest in the protection of minor children, particularly in circumstances where the protection is considered necessary as against the parents themselves.” Carefully analyzing the actions of the social workers sued by the father, and the applicable law available to guide the actions of those social workers, Judge Sotomayor ultimately held that despite problems with the investigation, “we conclude that defendants had a reasonable basis for their substantiation determination and that they therefore did not violate plaintiffs’ constitutional rights.” However, she also provided clear guidance to child protection workers: “[F]rom this day forward, these and other case workers should understand that the decision to substantiate an allegation of child abuse on the basis of an investigation similar to but even slightly more flawed than this one will generate a real risk of legal sanction.”

Judge Sotomayor has also thoughtfully applied the law governing the rights of disabled persons. In holding that the court below had inaccurately formulated a jury charge in an employment discrimination case, Judge Sotomayor wrote, “Taken as a whole, the charge suggests that an employer may offer any accommodation that does not cause an undue hardship, including reassignment to an inferior position, and that the plaintiff is required to accept . . . . The district court . . . erred.”

As a district judge for the Southern District of New York, Judge Sotomayor considered a claim brought by a woman with a learning disability who sought reasonable accommodations in taking the New York State Bar Examination. Judge Sotomayor conducted a total of twenty-five days of trial, reviewed thousands of pages of exhibits and briefs, and heard testimony from eight experts, finally concluding that the plaintiff was entitled to accommodations of her disability in taking the bar examination, and \$7,500 in damages. Her detailed and respectful treatment of the parties and witnesses in a decision on a matter involving less than ten thousand dollars in damages is testament to her commitment to the fair and equal administration of justice to all who come before her.

In another case, Judge Sotomayor considered a district court’s dismissal of the claim of a former employee who alleged that he was discharged after he suffered a disabling back injury. In a clear and erudite decision, Judge Sotomayor addressed the interplay of three different disability statutes, evaluated complex procedural issues, and analyzed the potential liability of a parent corporation and a sister corporation for employment discrimination. Her succinct conclusion reinstated the employee’s claim against his employer, affirmed the dismissal of the claim against the sister corporation, and resolved the procedural issues.

#### CONCLUSION

Judge Sotomayor’s jurisprudence defies easy categorization because each of her decisions is characterized by careful consideration of the law and the facts. Her clear and compelling analyses and her fair treatment of the parties epitomize the ideal qualities of a Supreme Court Justice. She will bring balance and perspective to the Court and will enhance the delivery of justice to all.

CONNECTICUT  
HISPANIC BAR ASSOCIATION,  
Hartford, CT, July 10, 2009.

Senator PATRICK J. LEAHY,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR LEAHY: The Connecticut Hispanic Bar Association (CHBA) writes on the eve of the commencement of the hearing on Judge Sonia Sotomayor's nomination to the United States Supreme Court to urge you and the other members of the United States Senate Judiciary Committee to treat Judge Sotomayor with the respect she deserves, examine her extensive record thoughtfully, and perform your constitutional duty to advise and consent to her nomination expeditiously and without obstruction.

Founded in 1993, the CHBA works to enhance the visibility of Hispanic lawyers throughout the state; to facilitate communication and sharing of information and resources among our members; to serve as mentors to new lawyers and law students; and to assist the public and private sectors in achieving diversity in their law firms and legal departments. The CHBA also serves to address and respond to issues impacting our Hispanic communities, including the issues of access to the courts, judicial diversity and other social challenges.

Judge Sotomayor is a member and a long-time supporter of the CHBA. In recognition of her accomplishments, the CHBA honored Judge Sotomayor in 1998 with its Achievement Award at its Annual Awards Dinner.

Since being appointed to the bench, Judge Sotomayor has compiled an exemplary and distinguished record. She has earned a stellar reputation as a defender of the rule of law and praise for her thoughtful and thorough written opinions. Moreover, in her over 11 years of service with the United States Second Circuit Court of Appeals, she has participated in over 3,000 decisions and authored approximately 400 opinions on important issues of constitutional law, difficult procedural matters, and complex corporate and business issues.

Additionally, as you know, her personal story is similarly compelling. Judge Sotomayor grew up in a working-class family in New York City. She attended Princeton University on a scholarship where she graduated summa cum laude and was elected Phi Beta Kappa. She went on to earn her law degree at Yale Law School where she was an editor of the Yale Law Journal. During most of her career, Judge Sotomayor has chosen to serve the American public, first as a prosecutor in Manhattan and then as a federal judge.

The CHBA fully supports the appointment of Judge Sotomayor to the United States Supreme Court and urges the United States Senate Judiciary Committee to do the same.

Sincerely,

RENÉ ALEJANDRO ORTEGA,  
President.

NEW YORK CITY BAR,  
New York, NY, June 30, 2009.

Re evaluation of nomination Judge Sonia Sotomayor.

Hon. PATRICK J. LEAHY,  
Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR LEAHY: The Association of the Bar of the City of New York reviewed and evaluated the nomination of Judge Sonia Sotomayor to be a Justice of the United States Supreme Court. The Association found Judge Sotomayor to be Highly Qualified for that position.

A report detailing our findings can be found at: [http://www.nycbar.org/pdf/report/11693606\\_3.pdf](http://www.nycbar.org/pdf/report/11693606_3.pdf)

Sincerely,

PATRICIA M. HYNES,  
President.

THE ASSOCIATION OF THE BAR OF THE CITY OF  
NEW YORK FINDS JUDGE SONIA SOTOMAYOR  
HIGHLY QUALIFIED FOR U.S. SUPREME  
COURT

NEW YORK, June 30, 2009.—Patricia M. Hynes, President of The Association of the Bar of the City of New York, announced that the Association has concluded that Judge Sonia Sotomayor is Highly Qualified to be a Justice of the United States Supreme Court.

The Association found that Judge Sotomayor demonstrates a formidable intellect; a diligent and careful approach to legal decision-making; a commitment to unbiased, thoughtful administration of justice; a deep commitment to our judicial system and the counsel and litigants who appear before the court; and an abiding respect for the powers of the legislative and the executive branches of our government.

In conducting its evaluation, the Association reviewed and analyzed information from a variety of sources: Judge Sotomayor's written opinions from her seventeen years on the circuit court and district court; her speeches and articles over the last twenty-one years; her prior confirmation testimony; comments received from the Association's members and committees; press reports, blogs and commentaries; interviews with her judicial colleagues and numerous practitioners; and an interview with Judge Sotomayor.

The Association determined that Judge Sotomayor possesses, to an exceptionally high degree, all of the qualifications enumerated in the Guidelines established by the Association for considering nominees to the United States Supreme Court: (1) exceptional legal ability; (2) extensive experience and knowledge of the law; (3) outstanding intellectual and analytical talents; (4) maturity of judgment; (5) unquestionable integrity and independence; (6) a temperament reflecting a willingness to search for a fair resolution of each case before the court; (7) a sympathetic understanding of the Court's role under the Constitution in the protection of the personal rights of individuals; and (8) an appreciation for the historic role of the Supreme Court as the final arbiter of the meaning of the United States Constitution, including a sensitivity to the respective powers and reciprocal responsibilities of the Congress and Executive.

The Association has been evaluating judicial candidates for nearly 140 years in a non-partisan manner based upon the nominees' competence and merit. Although the Association had evaluated a number of Supreme Court candidates over the course of its history, in 1987 it determined to evaluate every candidate nominated to the Supreme Court.

In 2007, the Executive Committee of the Association moved from a two-tier evaluation system in which candidates were found to be either "qualified" or "not qualified", to a three-tier evaluation system. The ratings and the criteria that accompany them are as follows:

"Qualified." The nominee possesses the legal ability, experience, knowledge of the law, intellectual and analytical skills, maturity of judgment, common sense, sensitivity, honesty, integrity, independence, and temperament appropriate to be a Justice of the United States Supreme Court. The nominee also respects precedent, the independence of the judiciary from the other branches of government, and individual rights and liberties.

"Highly Qualified." The nominee is qualified, to an exceptionally high degree, such that the nominee is likely to be an outstanding Justice of the United States Supreme Court. This rating should be regarded as an exception, and not the norm, for United States Supreme Court nominees.

"Not Qualified." The nominee fails to meet one or more of the qualifications above.

The present review is the first time the Association has utilized this three-tier system for a Supreme Court review.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Republican time for the next hour be allocated as follows: myself for 10 minutes, Senator BARRASSO for 10 minutes, Senator CRAPO for 15 minutes, Senator WICKER for 10 minutes, and Senator COLLINS for 15 minutes.

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

Mr. ROBERTS. Mr. President, I rise today to express my opposition, my considered opposition, to Judge Sonia Sotomayor's nomination to the U.S. Supreme Court.

As Senators, I think we all know we have an obligation to ensure that our courts are filled with qualified and impartial judges.

While Judge Sotomayor has an impressive resume—that is a given—I am concerned that her personal judgments and views will impact her judicial decisions. In addition, I find some of her rulings very troubling.

During the Senate's debate on the nomination of Chief Justice John Roberts, then-Senator Obama stated:

that while adherence to legal precedent and rules of statutory or constitutional construction will dispose of 95 percent of the cases that come before the Court, so that both a Scalia or Ginsburg will arrive at the same place most of the time on those 95 percent of the cases, what matters on the Supreme Court is those 5 percent of cases that are truly difficult. In those cases, adherence to precedent and the rules will only get you through the 25th mile of the marathon. That last mile can only be determined on the basis of one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy.

Thus the entrance of the "empathy" issue to this debate. I respectfully disagree with now-President Obama.

Judges must decide all cases in adherence to legal precedent and rules of statutory or constitutional construction. It does not mean if they do that they do not have empathy. I agree—and I think everybody would agree—everybody on the Supreme Court has empathy. But the role of a judge is not to rule based on his or her own personal judgments but to adhere to the laws as they are written.

While Judge Sotomayor stated during her confirmation hearing that "it is not the heart that compels conclusions in cases, it is the law," I still have concerns regarding her ability to remain impartial. She has made some statements in Law Review articles and speeches that are of serious concern. I



am not convinced that Judge Sotomayor will set aside her personal judgments and views.

While on the Second Circuit Court of Appeals, Judge Sotomayor joined a four-paragraph ruling on property rights. In *Didden v. Village of Port Chester*, the appellants claimed that a developer demanded \$800,000 in order to avoid condemnation of the property by the city. When the appellants refused to pay the \$800,000, they received a petition to initiate condemnation. Although the Second Circuit Court of Appeals dismissed the case, it was noted that relief could not be granted based on the U.S. Supreme Court's decision in *Kelo v. City of New London*. That four-paragraph ruling didn't even provide an in-depth analysis as to how the *Kelo* ruling applied to the facts at hand. In fact, the *Kelo* decision acknowledges that "a city no doubt would be forbidden from taking land for the purpose of conferring a private benefit on a particular party."

The four-paragraph ruling in *Didden* is very troubling. In Kansas, land is gold; farmland is platinum. We have a healthy respect for property rights in Middle America. It also bothers me that a court could make a broad statement without analyzing and applying the facts to case law.

Turning to firearm rights, Judge Sotomayor joined an opinion ruling that the second amendment is not a fundamental right and, therefore, does not apply to State and local governments. It is likely that at some point the second amendment's application to States could be argued before the Supreme Court. That could come very quickly. I would certainly hope that should this matter be argued before the Supreme Court, Judge Sotomayor would recuse herself. During her hearing, she did not indicate whether she would recuse herself in any decision. That was not, however, the case during the nomination hearings of Judges Alito and Roberts.

I do not discount the fact that Judge Sotomayor is a very accomplished judge and has an extensive judicial record. However, some of her statements, writings, and rulings concern me. They indicate her personal judgments and views may impact her judicial decisions. We have a constitutional obligation to ensure that our judges are impartial and faithful to the law.

During Chief Justice John Roberts' confirmation hearing, he noted:

Judges and justices are servants of the law, not the other way around. Judges are like umpires. Umpires don't make the rules. They apply them. The role of an umpire and judge is critical. They make sure everybody plays by the rules [not by empathy], but it is a limited role. Nobody ever went to a ball game to see the umpire.

I am not convinced that Judge Sotomayor will be an umpire and consistently adhere to the rule of law as opposed to empathy.

For these reasons and others cited by some of my colleagues, I oppose her nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, I have three criteria in evaluating an individual to fill a vacancy on the Supreme Court. First, select the best candidate for the job. Second, the Justice must be impartial and allow the facts and Constitution to speak. Third, a Justice's responsibility is to apply the law not to write it.

I have reviewed Judge Sotomayor's record, and I met with her to learn more about her. I want to take a moment to share my thoughts on Judge Sotomayor's nomination.

Judge Sotomayor has a compelling life story. She was raised in public housing projects in the Bronx. She was diagnosed with type 1 diabetes at age 8. Her father died when she was 9, and she was subsequently raised by her mother. Judge Sotomayor graduated valedictorian of Cardinal Spellman High School in the Bronx. She graduated *summa cum laude* from Princeton. She earned her juris doctorate from Yale Law School, where she was editor of the *Yale Law Review*. After graduating from law school, Judge Sotomayor worked as an assistant district attorney in New York City for 5 years. She then worked in private practice for 7 years.

In 1991, Judge Sotomayor was nominated to the Federal bench by President George Herbert Walker Bush. In 1998, President Clinton nominated her to the Second Circuit Court of Appeals where she currently sits.

I believe Judge Sotomayor has the legal experience and the skills to be considered for the Supreme Court. During the confirmation process, questions were raised about her ability to make decisions on the facts presented not on events and facts that became ingrained during her life. Judges must be impartial and allow the facts and the Constitution to speak not their personal experience. For America's judicial system to work, judges must always remain impartial.

At her confirmation hearing, Judge Sotomayor stated that her judicial philosophy is "fidelity to the law." This is in contrast to her extensive commentary over the past 15 years, a commentary that emphasizes personal experience over impartiality in a judge's decisionmaking. The contrast is especially troubling when a judge, as was the situation in the case of *Ricci v. DeStaphano*, fails to articulate the reasons for the decision.

In the *Ricci* case, the firefighters case, an exam was used as part of the promotion process. The exam consisted of a written test as well as an oral test. It was prepared by Industrial Organizational Solutions, a professional testing firm. The test measured individual knowledge, individual skills, and individual abilities related to the specific position being filled.

The highest scores on the written exam were achieved overwhelmingly by

White firefighters. After the results were posted, the city of New Haven, CT, did not like the results and decided at that point to not use the exam. Several officers sued. They sued the city for taking this action.

Who were the officers who sued? One was Frank Ricci, the lead plaintiff. He was a career firefighter. He is dyslexic. To study, he hired and paid someone to read the recommended study books onto an audio tape so he could listen to the tapes. He studied up to 13 hours a day. He gave up a second job, time with his family.

Lt Ben Vargas was another officer who sued and testified at Judge Sotomayor's confirmation hearing. He also has a career as a firefighter. He grew up in Fair Haven, which is a neighborhood of New Haven. His father was a factory worker. His family spoke Spanish at home, making school a challenge for him. He is the father of three boys. One of the reasons he joined the lawsuit:

I want them [my three sons] to have a fair shake, to get a job on their merits.

The district court ruled against the firefighters. Judge Sotomayor's court upheld the lower court ruling dismissing the case. Judge Sotomayor's court issued a one-paragraph opinion summarily dismissing the appeal. Her court failed to cite any precedents for this decision.

In June of 2009, the U.S. Supreme Court reversed Judge Sotomayor's opinion. The Supreme Court stated:

The City made its employment decision because of race. The City rejected the test results solely because the higher scoring candidates were white.

The Supreme Court went on to say:

The process was open and fair. The problem of course is that after the tests were completed, the raw racial results became the predominant rationale for the City's refusal to certify the results.

The Supreme Court's 34-page majority opinion, fully analyzing the facts and the legal issues, stands in stark contrast to the one-paragraph ruling by Judge Sotomayor. The lack of a detailed explanation by the judge's court on an issue that the Supreme Court said was not settled law is one I find troubling. More importantly, it raises doubt, fairly or unfairly, as to why Judge Sotomayor's court ruled the way it did. Through her own words, Judge Sotomayor's ability to completely disown personal beliefs and biases to reach a decision is in question.

I have additional concerns about the principles Judge Sotomayor will apply in deciding future cases involving important issues such as the second amendment. In a 2009 second amendment case decided by Judge Sotomayor's court, her court ruled that the second amendment did not apply to the States. The court cited Supreme Court cases from the 1800s as precedent. But Judge Sotomayor's court went further. They ruled that the second amendment right is not a fundamental right, thereby allowing

States and local authorities broad powers to deny individuals the right to bear arms. The court's ruling that the second amendment right is not a fundamental right can't be reconciled with recent decisions on other courts.

The U.S. Supreme Court, in a 2008 case, was asked to decide whether the District of Columbia could deny its citizens rights afforded to them under the second amendment. In its ruling, which was issued before Judge Sotomayor's 2009 decision, the Supreme Court said the second amendment confers an individual's right to keep and bear arms. The Court rightfully overturned the laws of the District of Columbia that denied citizens of the District the right to own a firearm.

In a 2009 ruling from the Ninth Circuit Court of Appeals, the court concluded that the series of 19th century Supreme Court cases cited by Judge Sotomayor were not controlling on the issue of whether the second amendment establishes a fundamental right. The Ninth Circuit Court concluded the Constitution did confer that right. The court ruled that the second amendment right to bear arms is a fundamental right of the people, and it is to be protected.

Judge Sotomayor, if confirmed, will receive a lifetime seat on the highest Court of the land. Her decisions may impact Americans and America for generations to come. Every American has the right to know what standard Judge Sotomayor will apply in judging future cases—fidelity to the law, as she stated in the hearings or, as she has stated in the past: "My experience will affect the facts I choose to see."

The Senate should know with absolute certainty the standard that Judge Sotomayor will use before confirming her to the Supreme Court. Without having that certainty, I am unable to support her nomination to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Idaho. Mr. CRAPO. Mr. President, I rise today to discuss President Obama's nomination of Judge Sonia Sotomayor to serve on the U.S. Supreme Court.

First, I want to say I appreciate the efforts of my colleagues on the Judiciary Committee to hold thorough hearings and to process this nomination.

There is no doubt that Judge Sotomayor's resume is impressive, with degrees from Princeton and Yale Law School. She then worked as an assistant district attorney, and later in private practice before serving as a U.S. district court judge, and currently as a U.S. circuit court judge.

It is unfortunate the Senate confirmation process has reached a point where nominees with such extensive backgrounds are no longer comfortable candidly discussing their judicial philosophy and views on key issues.

To date, I have received over 1,000 letters, e-mails, and phone calls from

Idaho constituents who are overwhelmingly opposed to Judge Sotomayor's nomination. Many of the concerns raised in this correspondence are similar to concerns I personally have about the nomination—concerns relating to the second amendment right to bear arms, concerns relating to judicial activism, concerns relating to whether foreign law should be utilized in interpreting U.S. statutes and our Constitution.

It was my hope that through the committee hearings and my personal meeting with Judge Sotomayor and other evaluation of her writings and her judicial decisions that these concerns and those of my constituents could be addressed. Unfortunately, though, when it came to the key issues, Judge Sotomayor's testimony often lacked the substance necessary and was even contradictory to her own previous statements, rulings, and writings.

I would like to discuss some of those areas of concern. Before I do so, though, I want to make it very clear that with this nomination, many are very rightfully proud that for the first time in our country's history we have a Latina nominated to our highest Court. And it must be noted that she is receiving and being afforded a clean up-or-down vote on the floor of the Senate this week.

As I indicated at the outset, it is unfortunate the confirmation process in the Senate has deteriorated so much over the last few years that others have not received similar opportunities. I am referring in this example to Miguel Estrada. Like Judge Sotomayor, Judge Estrada was rated unanimously "well qualified" by the American Bar Association when President Bush nominated him to the U.S. Court of Appeals for the DC Circuit.

The DC Circuit is often considered to be a stepping stone for Supreme Court nominations, and at that time many thought Judge Estrada would be a strong nominee, that he might be the first Latino nominated to the Supreme Court. Judge Estrada would have deserved such an opportunity as Judge Sotomayor does. Unfortunately, some on the left feared that scenario, and as a result there was a filibuster and Judge Estrada was never even allowed to have an up-or-down vote on the floor of the Senate.

I make this point now just to remind us all that although there are many here who have concerns about some of the positions and philosophies Judge Sotomayor has, there has been no effort to deprive her of an opportunity for an up-or-down vote on the floor of the Senate on her nomination. It is important our country recognize this.

Let me now turn to some of the issues I indicated earlier that are of concern. I know a number of my colleagues have spoken already about the issue of the second amendment right to keep and bear arms. That is one of my most significant concerns.

On July 27, 2008, the U.S. Supreme Court ruled in *District of Columbia v. Heller* that the second amendment to the Constitution protects an individual's right to keep and bear arms unconnected with service in a militia, and to use those arms for traditionally lawful purposes, such as self-defense within the home.

This ruling affirmed what common sense has told us all for a long time: that the second amendment was intended to ensure access to all law-abiding citizens for self-defense and recreation. Unfortunately, despite this ruling in *Heller*, Judge Sotomayor ruled in the *Maloney* case that the second amendment does not apply to the States.

Even the Ninth Circuit Court of Appeals, which has jurisdiction over my home State of Idaho and is often considered one of the most liberal courts in the land, has ruled the opposite way in a similar case, making it clear that second amendment rights are binding on the States.

In *Nordyke v. King*, the Ninth Circuit held that the right to bear arms is "deeply rooted in this Nation's history and tradition." Additionally, the court found that the "crucial role this deeply rooted right has played in our birth and history compels us to recognize that it is indeed [a] fundamental [right]."

Furthermore, and again even after the Supreme Court's ruling in *Heller*, Judge Sotomayor held that the second amendment does not protect a fundamental right.

With regard to whether the second amendment applies to States, I do not believe any reasonable person believes that other freedoms contained in the Bill of Rights do not apply to the States, such as freedom of religion, freedom of speech, or freedom of the press. Why is there a different standard or effort to try to keep the second amendment right to bear arms from being freely available to all individuals in the United States?

The Supreme Court has held in a series of opinions that the 14th amendment incorporates most portions of the Bill of Rights as enforceable against the States. Despite that *Heller* addressed firearms laws in the District of Columbia and not in a particular State, the Supreme Court used State constitutional precedents for its analysis in *Heller*. In fact, the Court's ruling was based in part on its reading of applicable language in State constitutions adopted soon after our Bill of Rights itself was adopted and ratified. By doing so, the Supreme Court recognized that the second amendment was, in fact, a fundamental right guaranteed under the Constitution.

On the issue of whether the second amendment right to bear arms is a fundamental right, I am extremely concerned that a nominee for the highest Court in our land would make such an argument. I am very concerned that a nominee for the highest Court in our

Nation could so construe the second amendment right to bear arms. This disregard of history and legal precedent is, to me, a clear sign of a penchant toward judicial activism.

As I have said, to reach her decision in *Maloney*, Judge Sotomayor had to, and did, make a judicial finding that the second amendment right to bear arms is not a fundamental right. In contrast, the Ninth Circuit Court of Appeals, in a footnote, said it as well as I think it can be said. The Ninth Circuit Court said:

The county—

Which in this case was the defendant which was seeking to implement some restrictions that were an infringement on the right to bear arms—

The county and its amici—

Those others who have filed briefs on the county's behalf—  
point out that, however universal its earlier support, the right to keep and bear arms has now become controversial.

Again, this is the Ninth Circuit Court of Appeals speaking.

But we do not measure the protection the Constitution—

The Constitution—

affords a right by the values of our own times. If contemporary desuetude sufficed to read rights out of the Constitution, then there would be little benefit to a written statement of them. Some may disagree with the decision of [our] Founders to enshrine a given right in the Constitution. If so, then people can amend the document. But such amendments are not for the courts to ordain.

That is the kind of correct analysis the Supreme Court has clearly guided us to with regard to the second amendment right to bear arms.

Throughout Idaho and across the United States, many millions of Americans believe the second amendment is a fundamental right, and I am one of those. Soon enough, the Supreme Court will decide whether the second amendment is incorporated by the 14th amendment to apply to the States. When that case is taken up, the Court will decide just how "fundamental" the second amendment is and whether States and communities can take away Americans' right to bear arms any time they want.

I cannot support a nominee to the Supreme Court who does not recognize this fundamental right in our Constitution. For this reason, I must oppose the nomination of Judge Sotomayor.

In addition, with regard to the role of a judge and judicial activism, when it comes to her views on the proper role of a judge, once again Judge Sotomayor's testimony before the Senate Judiciary Committee appears to directly contradict her publicly stated words and philosophy expressed prior to her nomination.

In 2003, when discussing her gender and heritage, Judge Sotomayor said:

My experiences will affect the facts I choose to see as a judge.

In another previous speech, she said:

Personal experiences affect the facts that judges choose to see.

This is simply shorthand for judicial activism and making policy rather than applying the law—exactly what the Ninth Circuit said courts were not to do. To defend against this very notion, however, justice is supposed to be blind. Indeed, Lady Justice is depicted with a blindfold. To judge by selectively choosing which facts to emphasize is akin to lowering the blindfold and taking a peek, thereby rejecting equal justice under the law. Those who are called to judge must adhere to the rule of law no matter what they personally think the law should be or what the outcome of a particular case should be.

After she was nominated to the Supreme Court, Judge Sotomayor told the Judiciary Committee:

My personal and professional experiences help me listen and understand, with the law always commanding the result in every case.

So we are left to wonder what has caused this contradiction, and whether she still believes that judges may choose to see the facts they want to see to get the result they want to get.

Also, I indicated I had a concern about foreign law. Another very puzzling contradiction in Judge Sotomayor's testimony involves the issue of judges looking to foreign law when deciding cases.

In her testimony before the Judiciary Committee, Judge Sotomayor said:

I have actually agreed with Justices Scalia and Thomas on the point that one has to be very cautious even in using foreign law with respect to the things American law permits you to.

However, in March of this year, in a speech to the ACLU of Puerto Rico, she did not seem to agree with Justices Scalia and Thomas when she said:

And that misunderstanding is unfortunately endorsed by some of our Supreme Court justices. Both Justice Scalia and Justice Thomas have written extensively criticizing the use of foreign and international law . . . in Supreme Court decisions. How can you ask a person to close their ears? Ideas have no boundaries. Ideas are what set our creative juices flowing. They permit us to think, and to suggest to anyone that you can outlaw the use of foreign or international law is a sentiment that's based on a fundamental misunderstanding. What you would be asking American judges to do is to close their minds to good ideas. . . . Unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, we are going to lose influence in the world.

Mr. President, I do not agree. In fact, that a nominee to the highest Court in our land would say that our Constitution and our statutes in America may be interpreted by reliance on foreign law is alarming.

The Supreme Court is charged with deciding the constitutionality of a law or interpreting it in the context of our American system of justice, not in accordance with selectively chosen foreign laws, which are numerous, contradictory, and often inconsistent with American jurisprudence. How else would a judge choose among these various foreign laws and precedents other

than selecting those that align with that judge's personal opinion?

Mr. President, I have raised three issues today that have caused me very significant concern: Judge Sotomayor's interpretation of the second amendment right to keep and bear arms, clearly written after the Supreme Court of the United States has given the guidance necessary for us to resolve the issue; her penchant toward choosing facts, enabling a judge or Justice, in this case, to reach the outcomes they want regardless of the way the law should be applied and the outcome that the law would otherwise require; and her willingness to allow American jurisprudence to be determined at the highest levels in our land by reliance on foreign law, foreign cases, and foreign precedent.

For these reasons, I cannot support President Obama's nomination of Judge Sotomayor to the Supreme Court. When we get to the vote on it this week, I will cast a "no" vote. I recognize the likelihood is her nomination will proceed and be confirmed, but it is my keen hope and conviction the issues I have raised and that many others have raised today will be heard and that, regardless of the outcome of the vote in the Senate this week, Judge Sotomayor, if she is confirmed, and all Justices on the Supreme Court will continue to recognize the fundamental nature of our right to bear arms under the second amendment; that they will focus on the proper role of judges not in creating law but in interpreting the law, and that they will decline to rely on foreign law to interpret and to create American jurisprudence.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WICKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WICKER. Mr. President, I wish to begin by thanking the members of the Judiciary Committee for conducting a thorough, fair, and respectful confirmation hearing. Judge Sotomayor herself stated that the hearing was as gracious and fair as she could have hoped. I consider that statement to be a tribute to Senators Leahy, Sessions and the committee members and their staffs and I commend them.

Article II, section 2 of the Constitution states that the President shall nominate—by and with the advice and consent of the Senate—Judges of the Supreme Court. The constitutional duty of "advice and consent" given to the Senate is of profound importance, particularly when considering a lifetime appointment to the Nation's highest Court. In reviewing Judge Sotomayor's nomination, I have taken this obligation very seriously.

Following Judge Sotomayor's nomination by the President, I, as did nearly all my colleagues in this Chamber, had a private, one-on-one meeting with her. We had a very cordial conversation, one in which I found Judge Sotomayor to be likeable and gracious. I appreciated learning more about her background. Make no mistake, Judge Sotomayor has a great personal and professional story to tell. She is proud of it, and she certainly should be. But in the instance of a Supreme Court nominee, the constitutional duty of advice and consent given to the Senate is not about personalities, likeability or life stories. It is about judicial philosophy and adherence to impartiality and fidelity to the law.

After careful consideration of her record, I was left with a number of irreconcilable concerns. I am deeply troubled by what I see as Judge Sotomayor's aversion to impartiality. The judicial oath requires judges to:

Administer justice without respect to persons, and do equal right to the poor and to the rich, and . . . faithfully and impartially discharge and perform all the duties incumbent upon [them] under the Constitution and laws of the United States.

To be clear, the oath requires judges to be impartial with respect to their social, moral and political views and to apply the law to the facts before them. In other words, provide equal justice under the law.

Yet Judge Sotomayor appears to believe in a legal system where decisions are based upon personal experiences and group preferences, not the letter of the law. Judge Sotomayor has said on repeated occasions that she:

Willingly accept[s] that judge[s] must not deny the differences resulting from experience and heritage but attempt . . . continuously to judge when those opinions, sympathies, and prejudices are appropriate.

These are her own words. She has stated many times, during more than a decade, that her background and personal experiences will affect the facts she chooses to see as a judge. In our brief meeting in June, Judge Sotomayor stated this notion a slightly different way, by saying her Latina heritage caused her to "listen a different way." I find these to be disconcerting statements which seem to conflict with the impartiality that I and an overwhelming majority of Americans believe is essential to our judicial system and even the very bedrock principles our Nation was founded upon.

In looking at her rulings, I noted that the Supreme Court has disagreed with Judge Sotomayor in 9 out of 10 cases it has reviewed and affirmed her in the remaining case by a narrow 5-to-4 margin. This record was demonstrated most recently in the Ricci case, where a majority of Justices of the Supreme Court rejected Judge Sotomayor's panel decision. This is a case in which a group of firefighters who had studied for months and passed a test were denied promotion because

not enough minority firefighters had done as well. In a one-paragraph, unsigned, and unpublished cursory opinion, Judge Sotomayor summarily—almost casually—dismissed the claims of these firefighters who had worked hard for a promotion.

When discussing the qualifications he would look for in replacing Justice Souter, President Obama said:

I view the quality of empathy, of understanding and identifying with people's homes and struggles as an essential ingredient for arriving at just decisions and outcomes.

Empathy is a great personal virtue, but there is a difference between empathy as a person and empathy as a judge. Judges should use the law and the law only, not their personal experiences or personal view or empathy. Personal biases and empathy have no place in reaching a just conclusion under the law. Ricci is an example of where Judge Sotomayor clearly failed this important test.

In addition, I am deeply concerned about Judge Sotomayor's decision in *Maloney v. Cuomo*, a second amendment case that could very easily be decided by the Supreme Court in the next year. In last year's *Heller* decision, the Supreme Court ruled that the second amendment guarantees an individual right to keep and bear arms. Yet, in *Maloney*, Judge Sotomayor relied on 19th century cases, arguably superseded after *Heller*, to summarily hold that the second amendment does not apply to the States. If Judge Sotomayor's decision is allowed to stand, the States will be able to place strict prohibitions on the ownership of guns and other arms. In refusing to confirm that the second amendment—a right clearly enumerated in the Bill of Rights—is a fundamental right that applies to all 50 States and, thus, to all Americans, Judge Sotomayor shows an alarming hostility to law-abiding gun owners across the country. That is a view that is certainly out of the mainstream in this Nation.

What is perhaps even more troubling is that *Maloney* is another example where Judge Sotomayor joined an unsigned, cursory panel decision. If she is confirmed to the Supreme Court, Judge Sotomayor will routinely hear cases raising fundamental constitutional issues such as *Maloney*. Those are the types of cases the Supreme Court hears. That is why issues of this nature make it to the Supreme Court. Yet Judge Sotomayor has a record of routinely dismissing such cases with difficult constitutional questions of exceptional importance to Americans with little or no analysis.

As an appeals court judge, Judge Sotomayor and her rulings are subject to a safety net: Her cases can be reviewed by the Supreme Court. In Ricci, the firefighters whose promotions were denied could appeal the decision and receive impartial justice. There is no backstop to the Supreme Court. Therefore, Judge Sotomayor's elevation to our Nation's highest Court takes on

much more significance than her previous selection to the appeals court.

So let me be clear: I have tremendous respect for Judge Sotomayor's life story and professional accomplishments. I commend her for her achievements, and I wish her well in the future. However, I am not convinced she understands the proper role of the courts in our legal system. Her record and her pronouncements are those of someone who sees the court as a place to legislate and make policy. I am not convinced Judge Sotomayor truly believes in the bedrock of our judicial system, which is impartiality under the law. Therefore, I must withhold my consent and vote no on her confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I rise in support of the nomination of Sonia Sotomayor to serve as an Associate Justice of the U.S. Supreme Court.

The Constitution grants the President the power to nominate and appoint individuals to the Federal judiciary. It also gives the Senate the power of advice and consent to such appointments. It does not, however, provide any specific guidance to the Senate on how we should exercise this important power.

In a democracy, discourse and disagreement are inevitable. Some, including myself, would say that these ingredients are not only expected, they are necessary for the healthy continuation of our vibrant, dynamic democracy.

Given this backdrop, disputes regarding the scope of the Senate's power of "advice and consent" are not uncommon or unexpected whenever the President puts forth a nominee for the Supreme Court. In fact, the ink on our Constitution was barely dry when the Senate rejected John Rutledge, one of President Washington's 13 nominees to the Supreme Court. Some Senators suggested they had voted against Mr. Rutledge out of a concern that he was losing his sanity. But the main reason for opposition to Mr. Rutledge appears to have been the nominee's opposition to the Jay Treaty with Great Britain—a treaty popular with the federalist-controlled Senate.

Since Mr. Rutledge's rejection by the Senate in 1795, Senators have continued to grapple with the criteria applicable to their evaluation of Supreme Court nominees and the degree of deference that should be accorded to the President.

There is no easy answer to this difficult question. Some argue that closer scrutiny by the Senate and less deference to the President is required when confirming judicial nominees, not only because Federal judges are in a separate branch of government but also because they have lifetime appointments. Thus, constitutional law scholar John McGinnis concludes that the text of the Constitution gives the

Senate “complete and final discretion in whether to accept or approve a nomination.”

Many other legal scholars, however, articulate a more constrained role for the Senate. They argue that the Senate’s power should be exercised narrowly, giving extraordinary deference to the President. Under this standard, the Senate would not reject judicial nominees unless they were clearly unqualified to serve.

Citing Alexander Hamilton’s *Federalist* 76, those who would constrain the Senate’s review of judicial nominees explain that the “advice and consent” responsibility was only intended as a safeguard against incompetence, cronyism, or corruption. As Dr. John Eastman testified before the Judiciary Committee in 2003, the Senate’s power of “advice and consent” does not give “the Senate a coequal role in the appointment of Federal judges.”

The constitutional arguments on both sides of this question of how much deference to give the President are enlightening. But, as is so often the case, my personal belief is that the truth lies between the two extremes. As a Senator, I have afforded considerable deference to both Democratic and Republican Presidents on their Supreme Court nominees. In considering judicial nominees, I carefully consider the nominee’s qualifications, competency, personal integrity, judicial temperament, and respect for precedent. Those are the tests I have applied to Sonia Sotomayor. Having reviewed her record, questioned her personally, and listened to the Judiciary Committee hearings, I have concluded that Judge Sotomayor should be confirmed to our Nation’s highest Court.

My decision to support this nominee does not reflect agreement with her on all of her rulings as a judge serving on the Second Circuit Court of Appeals. I disagreed, for example, with the perfunctory manner in which Judge Sotomayor has disposed of one case of constitutional consequence. Her panel’s cursory analysis of the complex and novel questions about the 14th amendment’s equal protection clause and title VII in the *Ricci* case—the case involving the New Haven firefighters, which has been called a reverse discrimination case—was as unfortunate as the decision itself. Indeed, in contrast to her panel’s one-paragraph opinion, the Supreme Court, in this case, needed nearly 100 pages to debate and resolve just the statutory question presented—never mind the difficult constitutional questions that were set aside for another day.

But my concerns about a handful of Judge Sotomayor’s rulings, as well as some of her prior comments over the course of her 17 years on the Federal bench, do not warrant my opposing her confirmation. Upon reading some of her other decisions, talking personally with her, questioning her at length, and hearing her response to probing questions, I have concluded that she

understands the proper role of a judge and that she is committed to applying the law impartially, without bias or favoritism. Specifically, in her testimony before the Judiciary Committee, Judge Sotomayor reaffirmed that her judicial philosophy is one of “fidelity to the law.”

She pledged “to apply the law,” not to make it. She testified that her “personal and professional experiences” will not influence her rulings.

There is no question in my mind that Judge Sotomayor is well qualified to be an Associate Justice of the Supreme Court. She has impressive legal experience. She has excelled throughout her life, and she is a tremendously accomplished person. Indeed, the American Bar Association Standing Committee on the Federal Judiciary—after an exhaustive review of her professional qualifications, including more than 500 interviews and analyses of her opinions, speeches, and other writings—unanimously rated her as “well qualified.”

Based on my personal review—a careful review—of her record, my assessment of her character, and my analysis of her adherence to precedent, Judge Sotomayor warrants confirmation to the High Court.

I know I will not agree with every decision Justice Sotomayor reaches on the Court, just as I have disagreed with some of her previous decisions. I believe, however, that her legal analyses will be thoughtful and sound and that her decisions will be based on the particulars of the case before her. My expectation is that Justice Sotomayor will adhere to Justice O’Connor’s admonition that “a wise, old woman and a wise, old man would eventually reach the same conclusion in a case.”

Based on her responses to the Judiciary Committee, Justice Sotomayor will avoid the temptation to usurp the legislative authority of the Congress and the Executive authority of the President. As Chief Justice John Marshall famously wrote in *Marbury v. Madison*, the Court must “say what the law is.” That, after all, in a nutshell, is the appropriate role for the Federal judiciary. For a judge to do more would undermine the constitutional foundations of the separate branches.

I will cast my vote in favor of the confirmation of Judge Sotomayor, as I believe she will serve our country honorably and well on the Supreme Court.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I rise today in wholehearted support of the historic nomination of Judge Sonia

Sotomayor to become an Associate Justice of the U.S. Supreme Court.

I have two words to summarize my feelings about this nomination: It’s time. It is time we have a nominee to the Supreme Court whose record has proven to be truly mainstream. It is time we have a nominee with practical experience in all levels of the justice system, whose upbringing in a Bronx housing project, whose experience as a prosecutor, litigator, and district court judge has enabled her to see, as she said in her own statement, “the human consequences” of her decisions. And it is time that we have a nominee who is Hispanic, a member of the fastest growing population in America. Finally, it is time that we have a frank discussion about what is preventing so many colleagues on the other side of the aisle from supporting Judge Sotomayor.

In short, this is the time, and it is time. It is time we have a moderate nominee. It is time we have someone with a great family history, an American family history. It is time we confirm the first Hispanic Justice to the U.S. Supreme Court.

Let’s start with Judge Sotomayor’s record, which is most important. Several of my Republican colleagues said, as they cast their votes against her in the Judiciary Committee, that they did not know what kind of Supreme Court Justice they might be getting in Judge Sotomayor. I find this conclusion to be confounding. Judge Sotomayor is hardly a riddle wrapped in mystery inside an enigma. No matter what cross section we take of her extensive record, down to examining individual cases, we see someone who has never expressed any desire or intention to overturn existing precedent, nor have my colleagues been able to point to any such case.

Instead, we see someone who lets the facts of each case guide her to the correct application of the law. We see someone who does not put her thumb on the scales of justice for either side, even if any sentient human being would want to reach a different result for a sympathetic plaintiff.

We know more about Judge Sotomayor than we have known about any nominee in 100 years. The 30,000-foot view of her record, gleaned from numerous studies about the way she has ruled in cases for 17 years—and that is the best way to tell how a judge is going to be, to look at their previous cases—when you look at those cases, it tells plenty about her moderation.

She has agreed with her Republican colleagues 95 percent of the time. She has ruled for the government in 83 percent of immigration cases, presumably against the immigrant. She has ruled for the government in 92 percent of criminal cases, against the criminal. She has denied race claims in 83 percent of cases. She has split evenly in a variety of employment cases.

No matter how we slice and dice these cases, we come up with the same conclusion about her moderation.

Within the category of criminal cases she decided, she ruled for the government 87 percent of the time in fourth amendment cases. This is important because the fourth amendment is an area where decisions are highly fact based and judges have discretion to decide when police have overstepped their bounds in executing searches and seizures. But she has not abused this discretion. In the overwhelming number of cases, she sides with the government, deciding each case carefully based on the facts before her.

Let's also look further at her immigration asylum cases. There she ruled for the government, against the petitioner for asylum, in 83 percent of the cases. That is also telling of her modular approach to judging. Asylum law, as her colleague Judge Newman has pointed out, gives judges a great deal of discretion to decide who can be granted asylum to stay in the United States. Judge Sotomayor has not abused this discretion a jot.

Given her upbringing in a Hispanic neighborhood of the Bronx, we might expect that her personal background would make her more, to borrow a term, empathetic to an immigrant seeking asylum. But the cases show that any perceived empathy did not affect her results. In fact, her 83-percent record puts her right in the middle of judges in her circuit.

Even in the realm of sports cases, which are always contentious and closely watched, Judge Sotomayor has shown her evenhandedness. She ruled for the professional football league in an antitrust case brought by a player and against Major League Baseball when she ruled for the players and ended the baseball strike.

I can go on. Judge Sotomayor voted to deny the victims of TWA flight 800 crash a more generous recovery because that was "clearly a legislative policy choice, which should not be made by the courts." If you have empathy, you certainly are going to decide with the victims. I met some of their families. She did not. The law did not allow her.

Judge Sotomayor ruled against an African-American couple who claimed they were bumped from a flight because of their race. Again, against a couple, a case called *King*, that said they were racially discriminated against. She did not think the facts merited their suit.

Judge Sotomayor rejected the claims of a disabled Black woman who said she was unfairly denied accommodations that were provided to White employees.

My Republican colleagues did not ask her about these cases. Instead, they looked at her speeches, not her cases, and decided that Judge Sotomayor believed it was the proper role of the court of appeals to make policy, and they condemned her roundly for this view.

Then they criticized her for not making policy in cases where they dis-

agreed with the outcome. This occurred in three cases—in *Ricci*, which involved the New Haven firefighters, a second amendment case, and a case involving property rights. I guess from the point of view of my Republican colleagues, judicial policy making is a bad thing except when it is not.

In each of these three cases they criticized, where they criticized the short opinions which she did not even write for herself, they said the ruling showed she was unable or unwilling to grapple with major constitutional issues. But in each of these cases, Judge Sotomayor agreed with the other two members of her court that the second circuit or Supreme Court precedents squarely dictated the result. There was no need for a fuller explanation. In fact, second circuit rules forbade panels from revisiting squarely divided precedents. In other words, in these cases, she was avoiding making policies. The cases were governed by the precedents. She was bound. They were decided by settled law. It was just the fact my friends across the aisle do not like what the settled law was. So we are getting awfully close to a double standard here.

In *Ricci*, they wanted her to overturn the second circuit discrimination law. And in the gun case, they wanted her to ignore a 100-year-old precedent that governs how the second amendment is applied to the States.

In the property rights case, they wanted her to ignore the law that governed the statute of limitations.

My colleagues asked Judge Sotomayor about an EPA case. In that case, she ruled the EPA had mistakenly considered a certain factor in deciding whether a company had used the "best technology available" to clean water. Even though she gave deference to EPA's interpretation of the law, Judge Sotomayor ruled against the government.

Yet, my friend, Senator SESSIONS of Alabama, stated that one of his reasons for opposing Judge Sotomayor is that she exhibits liberal progovernment ideology. It appears that being progovernment is a bad thing, except when it is not.

Let's talk about her answers to questions. Some of my friends on both sides of the aisle have said Supreme Court nominees need to be more forthcoming during the confirmation process. They fear that the hearings have become a little more than a choreographed Kabuki dance in which, as Senator SPECTER observed some time ago, nominees answered just enough questions to get confirmed.

I have shared this concern as well. It is too easy for a candidate who wishes to hide his or her ideology to decline to answer questions, to submit to cautious coaching, and to offer meaningless platitudes—promises that they would keep an open mind, respect the law, give everyone an equal chance. Of course, they would.

Candidates with little to hide, not surprisingly, have answered more ques-

tions than stealth nominees who have truly been outside the mainstream. Examples of candidates who had nothing up their sleeves and answered questions in a straightforward manner include Judge Stephen Breyer in 1994. He answered the question posed by Senator HATCH: "Do you believe that *Washington v. Davis* is settled law; and second, do you believe it was correctly decided?" And then Judge Ruth Bader Ginsburg—despite criticisms that she begged off too many questions—answered questions about abortion precedent and *Casey*.

Justices Alito and Roberts, in stark contrast, declined to answer question after question after question. Then Judge Roberts would not answer the most basic questions about settled commerce clause jurisprudence. Then Judge Alito would not say whether he thought the constitutional right to privacy included the holding of *Roe*.

I think we can see now, and I will discuss this in more detail, that this was part of a strategy to play an ideological shell game.

Now we are presented with a candidate whose views are truly moderate, as proven through the most copious records in 100 years. Nonetheless, my friend, Senator GRASSLEY, of Iowa believes that "Judge Sotomayor's performance at her Judiciary Committee hearing left me with more questions than answers." I have to respectfully disagree.

But Judge Sotomayor, again, in addition to her full and transparent record, proved in her answers that she is not a stealth candidate. On abortion and the holding of *Roe*, when asked by Senator FRANKEN: "Do you believe that this right to privacy includes the right to have an abortion?" Judge Sotomayor answered clearly and to the point: "The Court has said in many cases—and as I think has been repeated in the Court's jurisprudence in *Casey*—that there is a right to privacy that women have with respect to the determination of their pregnancies in certain situations." Clear. To the point.

When then-Judge Roberts was asked this question, he replied:

Well, I feel I need to stay away from a discussion of particular cases. I'm happy to discuss the principles of stare decisis, and the Court has developed a series of precedents on precedent, if you will. They have a number of cases talking about how this principle should be applied.

So who spoke clearly to the question? If you don't believe Judge Sotomayor did, how could you vote for Judge Roberts?

On property rights, when asked by Senator GRASSLEY about her understanding of the Court's holding in *Kelo*, Judge Sotomayor explained fully her understanding of the Court's holding, and there is a quote. When asked about his view of *Kelo*, then-Judge Alito declined to discuss the case. There are many more examples of how Judge Sotomayor answered questions about existing cases in much fuller detail



than the past two nominees and certainly about the key cases—property rights and abortion—which we debate, as we should, in this body.

As I said at the outset, it is time. It is time for a searching examination of why some of my colleagues are still determined to vote against Judge Sotomayor. She has a remarkably moderate record, she is highly qualified, she answers questions, and she is a historic choice who will expand the diversity of the Court.

What nominee of President Obama's would my Republican colleagues vote for—one who would have reached out and found that the right to bear arms should be incorporated to apply to the States, despite 100-year-old precedent to the contrary; one who would have ignored the Second Circuit precedent and prohibited the city of New Haven from trying to fix a promotional exam to give minorities a better chance at advancement; one who declined to answer questions about existing precedence? In other words, an activist who was intent on changing the law?

Of course, we now turn to the last refuge of objection to Judge Sotomayor: her statements outside the courtroom. I have always been a strong advocate of the principle that we consider carefully each nominee's entire record, including speeches and other judicial writings. But Judge Sotomayor is different than most because she has an enormous judicial record to review and consider. She is not a stealth candidate. There is a push and pull here in terms of what is important to evaluate with respect to each individual nominee. With 17 years of judicial opinions, 30 panel opinions, and 3,000 cases in total, how much emphasis should we put on the three words "wise Latina woman," whether we disagree with them or not?

I would submit the answer should be, compared to her copious record, not much. Nonetheless, by my count, my colleagues on the other side of the aisle asked no fewer than 17 questions about her "wise Latina woman" comment. In contrast, they asked questions of about 6—6 of Judge Sotomayor's cases over the course of the 3 days; 6 cases out of 3,000 in 17 years of judging.

I don't agree with this approach to analyzing her record. Nonetheless, I agree with my colleague, Senator GRAHAM—who is voting for her after engaging in arguably the most searching examination of her speeches—that we are entitled to know who we are getting as a nation. He is absolutely right. Certainly it is appropriate to look at her speeches, but let us give them proper weight and proper context.

And let us be clear about another thing: Judge Sotomayor is no Robert Bork. She is no Judge Roberts or Judge Alito. She has not made comments outside the courtroom that indicate her strong views on abortion or her views that the power of Congress must be severely curtailed or that a substantial

body of first amendment jurisprudence should be overturned. Again, if the standard is extrajudicial statements, my colleagues seem to be using a different standard for Judge Sotomayor than the standard they used for judges such as Roberts, Alito, and Thomas.

But let me give my friends some reassurance. The proof is in the pudding. Judge Sotomayor is and always has been a moderate judge. Similar to many judges across the country, she has remained neutral in race cases, in spite of her race; in gender cases in spite of her gender; in first amendment cases in spite of racist and repugnant speakers. The scales of justice in her courtroom are not weighted.

Let me now conclude by discussing the precedent set by past nominations—more broadly, where I think my colleagues are headed and where we ought to be going instead. In 2001, I wrote an op-ed arguing that we need to take ideology into account when evaluating judges. I wrote that op-ed because I was astounded by the nominees President Bush's administration was sending to the Senate.

The conservative movement had captured Congress and the White House for the first time. But even though conservatives—strong conservatives, hard-right conservatives—controlled these two branches, the hard right was not able to move the country as far to the right as they had hoped. So they turned to the judiciary. They couldn't do it with the President, even though they had elected him. They couldn't do it with the House or the Senate, even though, again, the hard right had predominated. So they turned to the one unelected branch—the judiciary—to advance the agenda they weren't able to move through the democratically elected branches of government.

The Bush administration complied with the hard right and nominated judges who were so far out of the mainstream it would have been irresponsible for us to confirm them blindly. So we asked them questions about their judicial philosophy and their ideology, and our questions were not met with thorough answers or with a demonstrated record of mainstream judging but with banalities or even obstinate silence.

If we tried to rank the ideology of nominees on a scale of 1 to 10, with 1 being all the way to the right, such as Judge Thomas, and 10 being all the way to the left, such as Justice Brennan, I think the Bush nominees to the Supreme Court and court of appeals were almost exclusively 1's and 2's—way over. If you looked at President Clinton's nominees, they were somewhat left of center. But not much, mainly sixes and sevens—prosecutors, partners in law firms—not lawyers who had spent their careers in activist causes.

President Obama has taken a different approach. He is trying to return the Court to the middle, to the pre-Bush days, the days of having judges who may not be exactly what the right

wants in a judge or even what the left—the far left—wants in a judge. We are returning to the days where judges were fives and sixes and sevens—maybe fours. They were squarely in the mainstream. We are returning to the days when judges put the rule of law first.

Somehow my Republican colleagues are aghast. The only judges they seem to want to vote for are ones and twos—judges who are on the hard right. The President is not going to nominate judges who have that view. After all, elections do matter.

My colleagues say they do not want activist judges. What they mean is they do not want judges who will put the rule of law first. They only want judges who will impose their own ultra-conservative views. An activist now seems to be not someone who respects the rule of law but someone who is not hard right. If you are mainstream, even though you are interpreting the law, you are an activist because you will not turn the clock back.

We must and will continue to fight for mainstream judges.

I have heard some say this fight isn't about Judge Sotomayor, given her proven record of mainstream judging and fidelity to the law. These commentators argue that Republicans are laying down their marker for President Obama's next nominee. I don't know who that nominee will be, but I am confident it will be a qualified candidate who is significantly more in the mainstream, if you take the mainstream being the actual place where the middle of America is—more in the mainstream than Justices Thomas or Scalia or Roberts or Alito or some of the nominations we considered under the Bush administration, such as Miguel Estrada or Janice Rogers Brown or Charles Pickering. I am confident the next nominee will be consistent with the nominees President Obama has been sending us—moderate, mainstream, and rule of law.

At one point, the Republican Party argued for precedent and for strict construction because they wanted to push back on certain new precedents they thought were beyond the Constitution—precedents such as *Roe* and *Miranda*. But things have changed. Americans have accepted *Roe* and Americans have accepted *Miranda*. Now my colleagues want to change the law, so they have changed their methodology without changing the nomenclature. They still call judges activist, even though they want to stick to established law. I think it is a shame.

It is a shame that some of my colleagues can't put aside their own personal ideology and vote for a judge whom they might not have chosen but who is unquestionably mainstream. It is a shame we will not have the kind of nearly unanimous vote in favor of this nominee that judges on both sides of the aisle—from Justice Ginsburg to Justice Scalia—have received in the past. I think it is a shame the debate about this historic nomination has

been distilled to disputes over snippets of speeches.

But we are not going to let that stop the national pride we take in this moment. We are not going to let it stop us from confirming, by a broad and bipartisan margin, Judge Sonia Sotomayor to be the first Hispanic Justice on the U.S. Supreme Court.

In conclusion, as John Adams said: "We are a Nation of laws, not of men." But if the law were just words on parchment, it would never evolve to reflect our own changing society. "Separate but equal" would never have been understood to be "inherently unequal." Equality for women would never have been viewed as guaranteed under the Constitution's promise of equal protection under law. In fact, the second amendment might never have been viewed to extend beyond the right to possess a front-loading musket to defend, in a militia, against an occupying force.

With the nomination of Judge Sotomayor, we have an opportunity—a noble opportunity—to restore faith in the notion that the courts should reflect the same mainstream ideals that are embraced by America. Our independent judiciary has served as a beacon of justice for the rest of the world. Our system of checks and balances is the envy of every freedom-seeking nation. As I look at the arc of Judge Sotomayor's life, her record, and these hearings, I am confident we are getting a Justice who both reflects American values and who will serve them.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, every American should be proud that a Hispanic woman has been nominated to serve on the Supreme Court. In fulfilling our advice and consent role, of course, Senators must evaluate Judge Sotomayor on her merits, not on the basis of her ethnicity.

As I noted at the beginning of Judge Sotomayor's hearing, she has a background that creates a *prima facie* case for confirmation. She graduated from Princeton University and Yale Law School and then was an assistant district attorney, a corporate litigator, a district court judge, and a circuit court judge.

This background led the American Bar Association to rate her "Well Qualified." My counterpart on the Democratic side, Senator DURBIN, has said, "The burden of proof for a Supreme Court Justice nominee is on the nominee. . . . No one has a right to sit on the Supreme Court. . . . It is not enough for a nominee to be found well qualified by the American Bar Association."

It is obvious that the Senate cannot just rubberstamp the ABA. This is why we conduct our own evaluation of the nominee's background and record and then attempt to resolve outstanding questions at her hearing.

In evaluating a nominee, it is, of course, important to look at all aspects of the person's career. The nominee's prior judicial opinions are obviously an important consideration in this process. A lower court judge who issues judicial opinions that are outside the mainstream will, in all likelihood, continue to issue opinions that are outside the mainstream if promoted to a higher court.

But even judicial opinions do not tell us the entire story, especially when we are considering a nominee to the Supreme Court. District and appellate court judges operate under the restraining influence of judicial review. They have a strong incentive to avoid aberrant interpretations of the law, otherwise they risk embarrassment if cases are appealed to a higher authority. This check disappears, however, when a judge becomes a justice on the Supreme Court. There is no higher authority to reign in a lifetime-appointed Justice who decides, for whatever reason, to adopt a strained interpretation of the law.

Nor will a nominee generally be very specific about how he or she may rule on matters that could come before the Court.

So it is important to examine anything else in a nominee's background that could shed light on how the nominee really thinks about important issues. One source of information is a nominee's extrajudicial statements in speeches and writings. In these contexts, the nominee is not constrained by facts of particular cases, by precedents or the fear of appellate reprimand, but can say what he or she really thinks.

Before Judge Sotomayor's hearing, I studied not only her cases, but her extrajudicial writings, and a fraction of her speeches. I say a "fraction" because Judge Sotomayor was either unable or unwilling to provide a draft, video, or a sufficient topic description for more than 100 of the speeches that she identified for the Judiciary Committee.

But even with less than a full complement of her relevant materials, I saw a number of things in Judge Sotomayor's decisions and speeches that caused me to have great concern about her ability to put aside her biases and to impartially render a decision to the parties before her.

As I will explain, Judge Sotomayor's appearance before the Judiciary Committee did little to dispel my concerns. In many cases, her testimony exacerbated them.

I was and remain particularly troubled by Judge Sotomayor's speeches about gender and ethnicity. The speech that has garnered the most attention is, of course, her "wise Latina woman" speech, which was published in the *Berkeley La Raza Law Journal*. As it turns out, Judge Sotomayor delivered this same speech, with only minor variations, on multiple occasions over the course of several years.

In reading these speeches in their entirety, it is inescapable that her purpose was not simply "to inspire young Hispanic, Latino students, and lawyers," as she asserted at her hearing. In fact, as she said at the beginning of several of these speeches, her purpose was to talk about "my Latina identity, where it came from, and the influence I perceive it has on my presence on the bench."

Judge Sotomayor reemphasized this theme later in her speeches. She said: "The focus of my speech tonight, however, is not about the struggle to get us where we are and where we need to go, but instead to discuss . . . what . . . it will mean to have more women and people of color on the bench."

She continued: "[N]o one can or should ignore pondering what it will mean or not mean in the development of the law." In these speeches, she cited statements of some who had a different point of view than hers. Then she came back to her overriding theme: "I accept the proposition that, as Judge Resnik describes it, 'to judge is an exercise of power,' and because as . . . Professor Martha Minnow of Harvard Law School states 'there is no objective stance but only a series of perspectives—no neutrality, no escape from choice in judging. . . .'"

I believe judges must seek objective truth as found in the law of the case. I do not believe in judicial relativism, so I find her comment alarming. The essence of judging is neutrality. That is why Lady Justice is depicted with a blindfold. And that is why Federal judges are required to swear an oath to "administer justice without respect to persons, and do equal right to the poor and to the rich" and to "faithfully and impartially discharge all of the duties incumbent on [her]." That oath makes no allowance for a judge to choose the result based on his or her "perspective." The oath requires exactly the opposite: a dispassionate adherence to impartiality and the rule of law.

Now, back to Judge Sotomayor's speech. After agreeing with law professors who say that there is no objective stance, only a series of perspectives, no neutrality, Judge Sotomayor then said, "I further accept that our experiences as women and people of color will in some way affect our decisions. . . . What Professor Minnow's quote means to me is not all women or people of color, in all or some circumstances, or me in any particular case or circumstance, but enough women and people of color in enough cases will make a difference in the process of judging. Judge Sotomayor is talking here about different outcomes in cases based upon who the judge is. She goes on to substantiate her case by citing an outcome in a State court father's visitation case and two studies, which tended to demonstrate differences between women and men in making decisions in cases. She said, "As recognized by legal scholars, whatever the reason, not one woman or person of color in any one

position, but as a group, we will have an effect on the development of law and on judging." She continued: "our gender and national origins make and will make a difference in our judging."

To recap: Judge Sotomayor announced her topic, developed the theme, refuted the arguments of those with a different view, and substantiated her point of view with some evidence. Up to this point, she had made the case that gender or ethnicity will have an impact on the way judges decide cases. She had not rendered a judgment about whether this influence would provide better outcomes from her perspective.

This is the context of the "wise Latina" comment. Judge Sotomayor quoted Justice O'Connor who said that a wise old woman and a wise old man would reach the same decisions. But, Judge Sotomayor said, "I am also not sure I agree with that statement. . . . I would hope that a wise Latina woman with the richness of her experiences would, more often than not, reach a better conclusion than a white male who hasn't lived that life."

Judge Sotomayor concluded, in other words, that, not only will gender and ethnicity make a difference, but that they should make a difference. She then acknowledged that some White male judges had made some good decisions in the past, but seemed to complain that it took a lot of time and effort, something that not all people are willing to give, and so on.

Judge Sotomayor concluded by saying, "In short, I accept the proposition that a difference will be made by the presence of women and people of color on the bench and that my experiences will affect the facts that I choose to see as a judge." Judge Sotomayor added, "I simply do not know exactly what that difference will be in my judging. But I accept there will be some based on gender and my Latina heritage."

Even if the point of her speech was just to inspire young people or even to explore the question of whether judges could be influenced by their background, she should not have simply "accepted" that result. To conclude that judges could not avoid being so influenced and then not admonish that, of course, a judge must try his or her best to avoid that result, to try to set aside any bias and prejudice, was to abdicate her role as a judge in teaching her audiences.

Never, not once, in her speech, did she say that the biases she discussed were harmful to impartial judging and needed to be set aside. Instead, Judge Sotomayor's speeches seem to be celebrating these differences, these biases. The clear and unmistakable inference in her speeches is that she embraces the fact that minorities and women will reach a different outcome, indeed, a "better" outcome.

Before the Judiciary Committee, Judge Sotomayor refused to recant the speeches or acknowledge this egregious omission. But she did try desperately

to convince committee members that her words conveyed a message other than the obvious one. Indeed, according to Judge Sotomayor, her words conveyed the exact opposite meaning. She said: "I was talking about the very important goal of the justice system is to ensure that the personal biases and prejudices of a judge do not influence the outcome of a case. What I was talking about was the obligation of judges to examine what they're feeling as they're adjudicating a case and to ensure that that's not influencing the outcome." I've read the speeches in their entirety many times, and have verified that that is most certainly not what she was "talking about."

Judge Sotomayor's recharacterization of her speeches before the Judiciary Committee sounds like the objective, neutral approach that her speech explicitly dismissed. It is hard to understand how the same person could honestly make both statements. They are irreconcilably antithetical.

Further examples abound, but for the sake of time I will offer only one more. When Judge Sotomayor tried to explain her disagreement with Justice O'Connor's statement about how a wise old man and a wise old woman would reach the same conclusions, she said: "The words that I used, I used agreeing with the sentiment that Justice Sandra Day O'Connor was attempting to convey." That's not true. Her explanation strains credulity. Both as to whether she really believes judges should try to set aside biases, including those based on race and gender, and the basic element of judicial temperament, forthrightness and fidelity to the oath of truth she took before the Judiciary Committee, I conclude she did not carry the very low burden of proof.

I also would like to discuss another of Judge Sotomayor's speeches, an address to the Puerto Rican ACLU on the subject of foreign law. But first, I should take a moment to explain why this issue is so critical.

There is a growing school of thought among some academics, and even some judges, that foreign law and practices should be used as an aid to understanding and interpreting our own laws and Constitution. This is problematic for two main reasons.

First, as Chief Justice John Roberts pointed out during his confirmation hearing, the consideration of foreign law by American judges is contrary to principles of democracy. Foreign judges and legislators are not accountable to the American electorate. Using foreign law, even as a thumb on the scale, to help decide key constitutional issues devalues Americans' expressions through the democratic process. It is simply irrelevant, except in a very few specific situations.

Second, even if the use of foreign law were not inconsistent with our constitutional system, its use would free judges to enact their personal preferences under the cloak of legitimacy.

Against this backdrop, Judge Sotomayor delivered her April 28, 2009,

speech entitled, "How Federal Judges Look to International and Foreign Law Under Article VI of the U.S. Constitution." From that speech, we begin to see how foreign law could shape Judge Sotomayor's jurisprudence in the future. Her comments were not casual observations, but directed to this specific topic, and, presumably says what she means.

After conceding that judges "don't use foreign or international law" as binding precedent in a case, she nonetheless maintained that foreign law could, and should, be "considered." In Judge Sotomayor's view, foreign law is a source for "good ideas" that can "set our [i.e., judges'] creative juices flowing." Putting aside for a moment the fact that deciding an antitrust case, or a commerce clause dispute, or an Indian law issue, or an establishment of religion case does not require "creative juices," Judge Sotomayor's suggestion that judges consider foreign law would interfere with specific rules of construction or application of precedent.

Judge Sotomayor went on in this same ACLU speech to distance herself from two sitting justices who are critical of judges considering foreign law and align her views with those of Justice Ginsburg who recently endorsed the use of foreign law at a symposium at the Moritz College of Law at Ohio State University.

Specifically, Judge Sotomayor stated that "[t]he nature of the criticism comes from . . . the misunderstanding of the American use of that concept of using foreign law. And that misunderstanding is unfortunately endorsed by some of our own Supreme Court justices. Both Justice Scalia and Justice Thomas have written extensive criticisms of the use of foreign and international law in Supreme Court decisions. . . ."

She continues: "I share more the ideas of Justice Ginsburg in thinking . . . that unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, that we are going to lose influence in the world. Justice Ginsburg has explained very recently . . . that foreign opinions . . . can add to the story of knowledge relevant to the solution of a question. And she's right."

Judge Sotomayor's rationale for judges looking to foreign law—so that the United States does not "lose influence in he world"—is astonishing. Not only is such an approach irrelevant to the role of judges, vis-a-vis the other branches of government, and arguably usually irrelevant even for the President and Congress as a yardstick with which to measure U.S. domestic and foreign policy, it is totally irrelevant to the considerations for deciding any particular dispute between two parties.

In response to questions from committee members concerned about these kinds of statements, Judge Sotomayor again tried to drastically recharacterize her prior statements. She testified that her speech was quite clear

that “foreign law cannot be used as a holding or a precedent or to bind or to influence the outcome of a legal decision interpreting the Constitution or American law that doesn’t direct you to that law.” But in April of this year, Judge Sotomayor said, “ideas are ideas, and whatever their source, whether they come from foreign law or international law, or a trial judge in Alabama, or a circuit court in California, or any other place, if the idea has validity, if it persuades you, then you are going to adopt its reasoning.” These two statements cannot be squared, even though they occurred just 2½ months apart.

Later in her hearing, Judge Sotomayor gave the following testimony: “I will not use foreign law to interpret the Constitution or American statutes. I will use American law, constitutional law to interpret those laws except in the situations where American law directs the court.” While this kind of declarative statement would normally provide some measure of comfort, it is belied by words Judge Sotomayor uttered less than 3 months ago, that judges were “commanded” to look to “persuasive” sources, including foreign law, in interpreting our own law. And it is even inconsistent with an exchange Judge Sotomayor had with Senator SCHUMER earlier in the hearing, in which she agreed that foreign law could be used for the same purposes as traditional interpretive tools, such as dictionaries.

It gives me great pause that Judge Sotomayor could say one thing at a public speech earlier this year and say the opposite while under oath before the Judiciary Committee, especially since she never repudiated her speech.

Finally, when Judge Sotomayor had an opportunity to reflect upon her testimony, review the transcript, and correct the record, she reverted to her former position by spinning the meaning of the word “use.”

Specifically, as I just noted, in her hearing before the Senate Judiciary Committee, Judge Sotomayor testified under oath that “foreign law cannot be used as a holding or a precedent or to bind or to influence the outcome of a legal decision interpreting the Constitution or American law that doesn’t direct you to that law.” In written answers submitted for the record she wrote, “In my view, American courts should not ‘use’ foreign law, in the sense of relying on decisions of foreign courts as binding or controlling precedent, except when American law requires a court to do so. In limited circumstances, decisions of foreign courts can be a source of ideas, just as law review articles or treatises can be sources of ideas. Reading the decisions of foreign courts for ideas, however, does not constitute ‘using’ those decisions to decide cases.”

So we are back to “considering,” but not “using.” Or is it, using as ideas, but not binding precedent? And if so, of what use are ideas if not used in some

way? And if used in some way, could they influence the decision? I am totally baffled how she could consider foreign law as a source of ideas consistent with her testimony that foreign law should not influence the outcome of cases. Effectively, immediately after the hearing, she rescinded her sworn testimony regarding foreign law.

Judge Sotomayor’s supporters argue that we should not focus on her speeches, but on her “mainstream” judicial record. They cite all manner of statistics that purport to show that Judge Sotomayor agreed with her colleagues, including Republican appointees, the vast majority of the time. That may be true; but, as President Obama has reminded us, most judges will agree in 95 percent of all cases. The hard cases are where differences in judicial philosophy become apparent.

I have looked at Judge Sotomayor’s record in these hard cases and again have found cause for concern. The U.S. Supreme Court has reviewed directly ten of her decisions—eight of those decisions have been reversed or vacated, another sharply criticized, and one upheld in a 5–4 decision. Indeed, just in the past 4 months, the Supreme Court has reversed Judge Sotomayor’s panels three times. That does not inspire confidence.

The most recent reversal is a case in point. In *Ricci v. DeStefano*, a case where Judge Sotomayor summarily dismissed before trial the discrimination claims of 20 New Haven firefighters, the Supreme Court reversed 5–4, with all nine Justices rejecting key reasoning of Judge Sotomayor’s court. But in my view, the most astounding thing about the case was not the incorrect outcome reached by Judge Sotomayor’s court; it was that she rejected the firefighters’ claims in a mere one paragraph opinion and that she continued to maintain in the hearings that she was bound by precedent that the Supreme Court said didn’t exist.

As the Supreme Court noted, *Ricci* presented a novel issue regarding “two provisions of Title VII to be interpreted and reconciled, with few, if any, precedents in the court of appeals discussing the issue.” One would think that this would be precisely the kind of case that deserved a thorough and thoughtful analysis by an appellate court.

But Judge Sotomayor’s court instead disposed of the case in an unsigned and unpublished opinion that contained zero—and I do mean zero—analysis. This is confounding given Judge Sotomayor’s Judiciary Committee testimony, in which she said: “I believe my 17-year record on the two courts would show that in every case that I render, I first decide what the law requires under the facts before me, and that what I do is explained to litigants why the law requires a result. And whether their position is sympathetic or not, I explain why the result is commanded by law.”

Because her initial decision was unpublished, the case—and the firefighters’ meritorious claims—would have been swept under the rug and lost forever if not for fellow Second Circuit Judge Jose Cabranes, who read about the firefighters’ case in a local newspaper, the *New Haven Register*.

Judge Cabranes looked into the situation, recognized the importance of the case, and requested that the entire Second Circuit, including judges who were not involved in the original decision, rehear the case. By a vote of 7–6, the Second Circuit denied rehearing the case, with Judge Sotomayor providing the seventh and decisive vote to avoid further consideration of her panel’s decision. Fortunately for the firefighters, Judge Cabranes wrote a blistering dissent that no doubt caught the attention of the Supreme Court. He charged that Judge Sotomayor and her panel had “failed to grapple with the questions of exceptional importance raised in this appeal.”

Some have speculated that the Judge Sotomayor’s panel intentionally disposed of the case in a short, unsigned, and unpublished opinion in an effort to hide it from further scrutiny. Was the case intentionally kept off of her colleagues’ radar? Did she have personal views on racial quotas that prevented her from seeing the merit in the firefighters’ claims? Was it merely coincidence that the standard adopted by Judge Sotomayor—which in the Supreme Court’s words “would encourage race-based action at the slightest hint of disparate impact” and would lead to a “de facto quota system”—was consistent with policy and legal positions advocated by the Puerto Rican Legal Defense and Education Fund, an organization with which she was intimately involved for 12 years? In repeated speeches through the years, Judge Sotomayor said, “I . . . accept that our experiences as women and people of color affect our decisions.” Was this such a case?

Judge Sotomayor was asked about her *Ricci* decision at length during the confirmation hearing. Her defense was that she was just following “established Supreme Court and Second Circuit precedent.” The problem with this answer is that *Ricci* presented a novel question for which there were no Supreme Court precedents squarely on point. Indeed, the Supreme Court noted that there were “few, if any” circuit court opinions addressing the issue.

During the hearing, I pressed Judge Sotomayor to identify those controlling Supreme Court and Second Circuit precedents that allegedly dictated the outcome in *Ricci*. Rather than answer the question, she dissembled and ran out the clock. Perhaps that was because, as Judge Cabranes’s dissent stated, the “core issue presented by this case—the scope of a municipal employer’s authority to disregard examination results based solely on the race of the successful applicants—is not addressed by any precedent of the Supreme Court or our Circuit.” But even

if we accept Judge Sotomayor's contention that there was some relevant Second Circuit precedent, it is quite clear that such cases would not bind her or other judges in considering en banc review. It is telling that even the Obama Justice Department found her legal position impossible to defend. It filed a brief in the case asking the Supreme Court to vacate and remand the case for further proceedings, essentially what the dissent favored, as well.

The truth is that we will never know the reasons that guided the outcome of the case. But we know, at the very least, that Judge Sotomayor exercised poor judgment in dismissing serious claims in an unsettled area of the law without engaging in an analysis of the issues. As Judge Cabranes wrote in dissenting from the denial of rehearing en banc: "The use of per curiam opinions of this sort, adopting in full the reasoning of a district court without further elaboration, is normally reserved for cases that present straight-forward questions that do not require explanation or elaboration by the Court of Appeals. The questions raised in this appeal cannot be classified as such, as they are indisputably complex and far from well-settled."

Clearly, Judge Sotomayor did not adequately explain to the litigants—or the Judiciary Committee—why the law required the result she supported. And she cast the decisive vote to ensure that the full circuit court could not review the case. Is this the kind of behavior we should expect of a judge who is seeking a promotion to the Supreme Court?

Finally, if I had been a litigant before her court and Judge Sotomayor had asked me the questions I asked her about Ricci, and had I "answered" them as she responded to me in the hearing, she would rightly have told me to either sit down or start answering her questions. Her "answers" answered nothing and, in my opinion, violated her obligation to be forthcoming with the Judiciary Committee.

Ricci is not the only Judge Sotomayor decision that gives reason to question her commitment to impartial justice. I am concerned about her analysis—or lack thereof—in *Maloney v. Cuomo*, a second amendment case that could find its way to the Supreme Court next year. *Maloney* was decided after the Supreme Court's landmark ruling in *District of Columbia v. Heller*, which held that the right to bear arms was an individual right that could not be taken away by the Federal Government.

In *Maloney*, Judge Sotomayor had the opportunity to consider whether that individual right could also be enforced against the States, a question that was not before the *Heller* court. In yet another unsigned opinion, Judge Sotomayor and two other judges held that it was not a right enforceable against States.

What are the legal implications of this holding? State regulations lim-

iting or prohibiting the ownership and use of firearms would be subject only to "rational basis" review. As Sandy Froman, a respected lawyer and former president of the National Rifle Association, said in her witness testimony, this is a "very, very low threshold" that can easily be met by a State or city that wishes to prohibit all gun ownership, even in the home. Thus, if Judge Sotomayor's decision were allowed to stand as precedent, then states will, ironically, be able to do what the Federal District of Columbia cannot—place a de facto prohibition on the ownership of guns and other arms.

Some have suggested that Judge Sotomayor's decision is not cause for alarm. They say that she was simply following precedent and that the *Maloney* case is not necessarily indicative of what she would do if confirmed to the Supreme Court. And they point to a recent decision by the Seventh Circuit, which similarly refused to apply the second amendment to State regulations. Apart from the fact that her ruling is now binding in the States covered by the Second Circuit, there is a critical difference between Judge Sotomayor's decision and that of the Seventh Circuit.

While the judges on the Seventh Circuit explicitly declined to decide what will be the key issue before the Supreme Court—whether the Second Amendment's right to bear arms is, in legal parlance, "fundamental," and therefore enforceable against states as well as the Federal Government—Judge Sotomayor's perfunctory decision did not leave this question open. Her panel specifically concluded, without any explanation, that the right to bear arms is in fact not a "fundamental" right a conclusion that, to the best of my knowledge, no other court has ever reached—and that, as Sandy Froman noted, "would rob the Second Amendment of any real meaning and would trample on the individual rights of America's nearly 90 million gun owners." Indeed, Judge Sotomayor's assessment stands in stark contrast to the Supreme Court's own opinion in *Heller*, which not once but twice refers to the right to bear arms as "fundamental." It is hard, if not impossible, to square these facts with Judge Sotomayor's repeated assertions, in sworn testimony before the Judiciary Committee, that she was just following precedent.

Judge Sotomayor's opinion in *Maloney* is extraordinary both for its lack of serious analysis and for reaching an unprecedented conclusion that was wholly unnecessary. She could have as easily chosen the path taken by the seventh circuit, and reserved for the Supreme Court the opportunity to decide in the first instance whether the right to bear arms is "fundamental." Or, like the ninth circuit, she could have undertaken a thorough analysis of the issue and determined that the right is, indeed, fundamental. She did neither.

As Sandy Froman stated:

When faced with the most important question remaining after *Heller*, whether the right to keep and bear arms is fundamental and applies to the states, Judge Sotomayor dismissed the issue with no substantive analysis. . . . By failing to conduct a proper Fourteenth Amendment analysis, the *Maloney* court evaded its judicial responsibilities, offered no guidance to lower courts and provided no assistance in framing the issue for resolution by the Supreme Court. Whenever an appellate judge fails to provide supporting analysis for their conclusion or address serious constitutional issues presented by the case, it is legitimate to ask whether the judge reached that conclusion by application of the Constitution and statutes or based on a political or social agenda.

I agree. I did not expect or even want Judge Sotomayor to precommit to a particular reading of the second amendment. The Judiciary Committee did, however, have a right to receive from her an explanation of the *Maloney* decision. At the very least she could have been more forthcoming in response to questions regarding recusal, but she would not even commit to recusing herself from the Supreme Court's consideration of her own *Maloney* decision if it were taken up as part of a consolidated appeal.

I think it is fair to say that Judge Sotomayor's testimony about the second amendment raised more questions than it answered. The issue of incorporation is bound to come before the Supreme Court. Those of us who support the right of the people to keep and bear arms should be very concerned about the position she has already taken and the fact that she has clearly reserved the option of reviewing the case on the Court she could be confirmed to, particularly on a matter she has already decided.

As we have seen, Judge Sotomayor's testimony about her previous speeches and some of her decisions is difficult, if not impossible, to reconcile with her record. Similarly, her testimony about the extent of her role with the Puerto Rican Legal Defense and Education Fund is in tension with the evidence we have.

At her hearing, Judge Sotomayor tried to downplay her role at PRLDEF. She said:

I was not like Justice Ginsburg or Justice Marshall. I was not a lawyer on the fund as they were, with respect to the organizations they belonged to. I was a board member.

In emphasizing her role as a long-time board member, Judge Sotomayor deflected attention from her service in litigation-focused positions, such as her 8 years on the litigation committee and the 4 years she served as that committee's chairperson. As anyone who is familiar with advocacy and public interest groups can attest, it is inconceivable that the chair of an organization's litigation committee would not have a significant role in shaping the organization's legal strategy.

Moreover, Judge Sotomayor's testimony that "it was not my practice and not that I know of, of any board member" to review briefs, is undermined by

PRLDEF's own meeting minutes. For example, on October 8, 1978:

[Litigation Committee] Chairperson Sotomayor summarized the activities of the Committee over the last several months which included the review of the litigation efforts of the past and present. . . .

The New York Times has detailed her active involvement, as recounted by former PRLDEF colleagues, who have described Judge Sotomayor as a "top policy maker" who "played an active role as the defense fund staked out aggressive stances." According to these reports, she "frequently met with the legal staff to review the status of cases" and "was an involved and ardent supporter of their various legal efforts during her time with the group."

What were the litigation positions advanced by PRLDEF during Judge Sotomayor's tenure there? Well, it argued in court briefs that restrictions on abortion are analogous to slavery. And it repeatedly represented plaintiffs challenging the validity of employment and promotional tests—tests similar to the one at issue in Ricci.

I want to return to a question I raised in my opening statement of Judge Sotomayor's hearing: What is the traditional basis for judging in America?

For 220 years, Presidents and the Senate have focused on appointing and confirming judges and Justices who are committed to putting aside their biases and prejudices and applying the law fairly and impartially to resolve disputes between parties.

This principle is universally recognized and shared by judges across the wide ideological spectrum. For instance, Judge Richard Paez of the ninth circuit—with whom I disagree on a number of issues—explained this in the same venue where, less than 24 hours earlier, Judge Sotomayor made her remarks about a "wise Latina woman" making better decisions than other judges. Judge Paez described the instructions that he gives to jurors who are about to hear a case. "As jurors," he said, "recognize that you might have some bias, or prejudice. Recognize that it exists, and determine whether you can control it so that you can judge the case fairly. Because if you cannot—if you cannot set aside those prejudices, biases and passions—then you should not sit on the case."

And then Judge Paez said:

The same principle applies to judges. We take an oath of office. At the federal level, it is a very interesting oath. It says, in part, that you promise or swear to do justice to both the poor and the rich. The first time I heard this oath, I was startled by its significance. I have my oath hanging on the wall in the office to remind me of my obligations. And so, although I am a Latino judge and there is no question about that—I am viewed as a Latino judge—as I judge cases, I try to judge them fairly. I try to remain faithful to my oath.

What Judge Paez said has been the standard for 220 years. It correctly describes the fundamental and proper role both for jurors and judges.

Before the hearing, my biggest question about Judge Sotomayor was whether she could abide by that standard. We spent 3 days asking her questions, trying to understand what she meant in some of her controversial speeches and what drove her to questionable conclusions in cases such as Ricci and Maloney.

Judge Sotomayor did not dispel my concerns. Her sworn testimony was evasive, lacking in substance, and, in several instances, incredibly misleading.

Her dissembling was widely noticed. Indeed, in an editorial, the Washington Post criticized Judge Sotomayor's testimony about her "wise Latina" statement. Here is what the Washington Post said:

Judge Sotomayor's attempts to explain away and distance herself from that statement were unconvincing and at times uncomfortably close to disingenuous, especially when she argued that her reason for raising questions about gender or race was to warn against injecting personal biases into the judicial process. Her repeated and lengthy speeches on the matter do not support that interpretation.

Until now, Judge Sotomayor has been operating under the restraining influence of a higher authority—the Supreme Court. If confirmed, there would be no such restraint that would prevent Judge Sotomayor from—to paraphrase President Obama—deciding cases based on her heartfelt views.

If the burden is on the nominee to prove herself worthy of a lifetime appointment to the Nation's highest Court, she must do more than avoid a "meltdown" in her testimony. She must be able to rationalize contradictory statements—assuming she does not repudiate one or the other—such as the differences between her speeches and her committee testimony. Her failure to do that has left me unpersuaded that Judge Sotomayor is absolutely committed to setting aside her biases and impartially deciding cases based upon the rule of law.

Judge Sotomayor is obviously intelligent, experienced, and talented. She represents one of the greatest things about America—the opportunity to become whatever you want with your God-given abilities. She is a role model for young women, as well as minorities, specifically. She is personable and, apparently, hard working. I respect the views of those who regard her well.

Moreover, I appreciate her many declarations during the hearing that judges must decide cases solely on the basis of the facts and the law; and especially her disagreement with the President's erroneous, I believe, formulations that, in the hard cases, a judge should rely on empathy and what is in his or her heart.

It may have been possible to vote to confirm her notwithstanding her decisions in Ricci, Maloney, and some other questionable cases. What I cannot abide, however, is her unwillingness to forthrightly confront the con-

tradictions among her many statements, so as to give us confidence that her Judiciary Committee testimony represents what she believes and what she will do. Instead, she would have us believe that there is no contradiction, that she can hold onto what she said before in speeches and decisions—for example, that she merely followed Supreme Court and circuit precedent in Maloney, and that the dissenters in Ricci did not disagree with her reasoning—and also her testimony.

I cannot ignore her unwillingness to answer Senators' questions straightforwardly—for instance, her insistence that as chair of PRLDEF's litigation committee, she had little to do with the organization's legal positions. She has not carried her burden of proof and, therefore, regrettably, I cannot vote to confirm her.

## RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 5 p.m.

Thereupon, the Senate, at 3:11 p.m., recessed until 5 p.m. and reassembled when called to order by the Presiding Officer (Mr. BURRIS).

## NOMINATION OF SONIA SOTOMAYOR TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume the 1-hour alternating blocks of time with the Republicans controlling the first hour.

The Senator from Oklahoma.

Mr. COBURN. I ask unanimous consent that the Republican time for the next hour be allocated as follows: Myself, 15 minutes; Senator SNOWE, 30 minutes; and Senator BROWNBACK, 15 minutes.

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

Mr. COBURN. Mr. President, I rise today to discuss the nomination of Judge Sonia Sotomayor to be a Justice on the U.S. Supreme Court. Judge Sotomayor comes to the Senate with a compelling personal story and notable professional accomplishments. She has worked as a prosecutor, a corporate attorney, and then as a Federal district court and circuit court judge. And, after meeting with Judge Sotomayor and visiting with her, I like her. She is a very kind and affable person.

Certainly Judge Sotomayor has an impressive resume; however, the Senate's inquiry into her suitability for a seat on the Supreme Court does not end with her professional accomplishments. Equally important to our providing "consent" on this nomination is our determination that Judge Sotomayor has the appropriate judicial philosophy for the Supreme Court. Judge Sotomayor needed to prove to the Senate that she will adhere to the



proper role of a judge and only base her opinions on the plain language of the U.S. Constitution and statutes. She needed to demonstrate that she will strictly interpret the Constitution and our laws and will not be swayed by her personal biases or political preferences. As Alexander Hamilton stated in *Federalist Paper No. 78* “the interpretation of the law is the proper and peculiar province of the courts. The constitution . . . must be regarded by the judges as a fundamental law.” Hamilton further stated that it was “indispensable in the courts of justice” that judges have an “inflexible and uniform adherence to the rights of the Constitution.” A nominee who does not adhere to these standards necessarily rejects the role of a judge as dictated by the Constitution and should not be confirmed.

With regard to judicial philosophy, the burden of proof always rests on the nominee. But, in Judge Sotomayor’s case, that burden was exacerbated by her prior speeches and statements. President Obama promised to nominate someone “who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old.” Senator Obama referred to his empathy standard when he voted against Chief Justice John Roberts. He stated that the tough cases “can only be determined on the basis of one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy.” She meets his standard but not mine. The President’s “empathy” standard is antithetical to the proper role of a judge. The American people expect a judge to be a neutral arbiter who treats all litigants equally. There is a reason why Lady Justice is always depicted blindfolded and why Aristotle defined law as “reason free from passion.” The judicial oath succinctly expresses this ideal by requiring judges to swear that they “will administer justice without respect to persons, and do equal right to the poor and to the rich, and . . . will faithfully and impartially discharge and perform all the duties incumbent upon them under the Constitution and laws of the United States.”

During her hearing, I was pleased to hear Judge Sotomayor disavow this empathy standard. In response to a question asking whether empathy should play a role in a judge’s decision, Judge Sotomayor responded, “We apply law to facts. We don’t apply feelings to facts.” She further stated that she “wouldn’t approach the issue of judging in the way the President does. . . . judges can’t rely on what’s in their heart. They don’t determine the law. Congress makes the laws. The job of a judge is to apply the law. And so it’s not the heart that compels conclusions in cases. It’s the law.” While I was encouraged to hear Judge Sotomayor’s testimony, I am concerned that these

statements and her other testimony were a dramatic departure from her earlier statements. So, I am left wondering: Which Judge Sotomayor are we getting?

I believe a person speaks from their heart when they discuss matters that are most important to them. On numerous occasions, most notably when she was teaching and guiding law students and bar associations, Judge Sotomayor made some impassioned statements about the role of a judge, which contradict her testimony at the hearing. Speaking in 2002, Judge Sotomayor said: “I wonder whether achieving that goal—of transcending personal sympathies and prejudices and aspiring to achieve a greater degree of fairness and integrity based on the reason of law—is possible in all or even in most cases. And I wonder whether by ignoring our differences as women or men of color we do a disservice both to the law and society.” This statement is of extraordinary concern to me. Not only does Judge Sotomayor’s statement indicate that she cannot set aside her personal sympathies and prejudices “in most cases,” but she does not appear to believe that this goal is even an admirable one.

Even more concerning, Judge Sotomayor stated prior to her hearing that “[p]ersonal experiences affect the facts that judges choose to see” and “our gender and national origins may and will make a difference in our judging.” It seems to me, and I think to most Americans, that the facts of a case are pretty clear and, if a judge is picking and choosing the facts they see based on their personal experiences, then they cannot possibly be impartial arbiters. I believe President Adams said it best when he stated: “Facts are stubborn things . . . and whatever may be our wishes, our inclinations, or the dictums of our passions, they cannot alter the state of facts and evidence.” I am disturbed that Judge Sotomayor does not agree with President Adams’s assessment.

Prior to her hearing testimony, she also stated that “court of appeals is where policy is made.” This statement is in stark contrast to her hearing testimony, and that contradiction is deeply disturbing to me. I think Judge Sotomayor believes what she said previously in her speeches, and when you believe in something, I think you should stand up and defend it. You should explain why you can still be a good judge even though you made those statements. That is what I wanted and expected to hear from her during her hearing. I was disappointed that she chose to dodge questions and obfuscate her record.

I was even more concerned that Judge Sotomayor reversed herself when discussing her judicial philosophy on the use of foreign law by U.S. judges. Results-oriented, activist judges who seek to rule based on their personal sympathies and prejudices often look to foreign law when inter-

preting our statutes and the Constitution in order to reach their desired outcome, and so I was deeply troubled by some of Judge Sotomayor’s earlier statements that endorsed the use of foreign law by U.S. judges. Justice Scalia succinctly articulated the problem with using foreign law in his dissent from a recent Supreme Court opinion, *Roper v. Simmons*. The majority decision in *Roper* cited the worldwide “evolving standards of decency” to strike down a statute that allowed judges to impose capital punishment for juveniles, even for the most heinous crimes. In his dissent, Justice Scalia asserted that the practice of relying on foreign law inevitably leads to judicial activism. He argued that “[w]hat these foreign sources ‘affirm,’ rather than repudiate, is the Justices’ own notion of how the world ought to be, and their diktat that it shall be so henceforth in America.”

I agree with Justice Scalia’s assessment. Unfortunately, judging by her statements, Judge Sotomayor does not. During her hearing, I asked Judge Sotomayor about a recent speech she gave in which she stated that prohibiting the use of foreign law would mean judges would have to “close their minds to good ideas” and that it is her “hope” that judges will continue to consult foreign law when interpreting our Constitution and statutes. In that speech, she condemned Justices Scalia and Thomas for their criticism of the use of foreign law in Supreme Court decisions stating: “The nature of the criticism comes from . . . a misunderstanding of the American use of that concept of using foreign law and that misunderstanding is unfortunately endorsed by some of our own Supreme Court Justices. Both Justice Scalia and Justice Thomas have written extensively criticizing the use of foreign and international law in Supreme Court decisions. . . . But, I share more the ideas of Justice Ginsburg in thinking, . . . in believing that unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, that we are going to lose influence in the world.” In her speech, Judge Sotomayor then specifically cited *Roper v. Simmons*—ruling unconstitutional a statute permitting imposing the death penalty for juveniles—and *Lawrence v. Texas*—overturning a law against same-sex sodomy—as examples of cases where the Supreme Court used foreign law appropriately to strike down State criminal laws.

I asked Judge Sotomayor about her statements disagreeing with Justices Scalia and Thomas’s criticism of the Court’s use of foreign law in cases such as *Roper* and *Lawrence*, and she reversed her earlier statement saying she “actually agreed with Justices Scalia and Thomas on the point that one has to be very cautious even in using foreign law with respect to the things American law permits you to.” Clearly, her hearing testimony was either inaccurate or designed to be misleading

since she previously said she shared “more the ideas of Justice Ginsburg” who has endorsed the Court’s use of foreign law in cases such as *Roper* and *Lawrence*.

I then asked Judge Sotomayor to affirm that she would refrain from using foreign law in making her decisions and writing her opinions, outside of where she was directed to do so through statute or through treaty. She stated unequivocally that she would “not use foreign law to interpret the Constitution or American statutes” and she would “not utilize foreign law in terms of making decisions.” I was reassured by these statements.

Regrettably, my reassurance did not last long. In her responses to written questions following the hearing, Judge Sotomayor reverted back to her former stated judicial philosophy regarding foreign law. She wrote: “In some limited circumstances, decisions of foreign courts can be a source of ideas, just as law review articles or treatises can be sources of ideas. Reading the decisions of foreign courts for ideas, however, does not constitute ‘using’ those decisions to decide cases.” She further stated: “decisions of foreign courts can be a source of ideas informing our understanding of our own constitutional rights. To the extent that the decisions of foreign courts contain ideas that are helpful to that task, American courts may wish to consider those ideas.” This reversion is extremely troubling to me because it suggests that Judge Sotomayor was either misleading or simply disingenuous in her hearing testimony. Equally troubling is Judge Sotomayor’s continued concern with world opinion of American law. Prior to her hearing she asserted that “unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, that we are going to lose influence in the world.” She echoed this concern after her hearing writing: “To the extent that American courts categorically refuse to consider the ideas expressed in the decisions of foreign courts, it may be that foreign courts will be less likely to look to American law as a source of ideas.” A judge’s job is not to consider what the rest of the world thinks about us, it is to interpret the Constitution.

Her judicial philosophy with regard to the use of foreign law is extremely important because it suggests that she will not strictly interpret our Constitution. If Judge Sotomayor believes it is appropriate to consult foreign law in some cases, where will she draw the line? During her hearing testimony, Judge Sotomayor stated that the right to bear arms is “settled law”; however, the recent Supreme Court decision in *District of Columbia v. Heller* left many questions unanswered. One critical unanswered question is whether the right will be incorporated on to the States—meaning that the States will not have the right to outlaw the use of firearms. If confirmed, would Justice

Sotomayor be receptive to arguments that foreign countries impose greater restrictions on gun rights and, therefore, be persuaded that some excessive State and Federal restrictions are constitutional? As she noted in her recent second circuit opinion holding that there is no fundamental right to bear arms, there are very few Supreme Court cases addressing the right to bear arms. If confirmed, would she fill in the gaps with foreign law?

Unfortunately, I believe my fears were confirmed by her answers to written questions following the hearing when she refused to pledge that she would not consider foreign law when considering second amendment cases. She stated: “Because cases raising Second Amendment questions are currently pending before the Court, I would not comment on how I would decide those cases if I am confirmed.” Her refusal to answer that should give pause to those who, like me, cherish the fundamental right to bear arms.

The concern that Judge Sotomayor may use foreign law to interpret the Second Amendment is further exacerbated by her judicial record on the bench and her hearing testimony, which demonstrates a clear hostility to gun rights. In *Maloney v. Cuomo*, decided January 29, 2009—post-*Heller*—Judge Sotomayor joined a cursory unsigned opinion holding that the second amendment is not a fundamental right and also that the amendment does not apply to the States. In *Maloney*, Judge Sotomayor incorrectly relied on an 1886 case—*Presser*—which did not use the modern Due Process incorporation analysis, a fact Judge Sotomayor failed to note in her opinion. When asked at her hearing to discuss the holding in *Presser*, she responded that she had not “read it recently enough to remember exactly” what it said even though she had relied on it in a decision issued a mere 7 months previously. Her disturbing lack of familiarity with the case suggests that she did not give great weight to the constitutional right at issue in *Maloney*. If Judge Sotomayor’s ruling in *Maloney* is upheld by the Supreme Court, States could ban all guns and other weapons for practically any reason.

During her oral and written testimony, she also refused to acknowledge the fundamental right to self-defense, which predates the Constitution, and stated that she did not recall a case that addressed the right to self-defense, despite the fact that the Supreme Court discusses the right to self-defense at length in *Heller*, the opinion upon which she relied. Judge Sotomayor even refused to discuss the legal test the Supreme Court uses to determine whether a right is fundamental, a basic legal test.

In another notable case about which Judge Sotomayor was questioned, she gave short shrift to a constitutional right that is vitally important to Americans, suggesting that she does not have the appropriate respect for

the rights guaranteed by the fifth amendment. In *Didden v. Village of Port Chester*, Judge Sotomayor extended the government’s power to take private property in a cursory opinion that one property professor said was the “worst federal court takings decision since *Kelo*.” He further stated that the opinion is “very extreme” and “is significant as a window into Judge Sotomayor’s attitudes toward private property.” Another notable professor said the opinion is “a disappointment” and is “wrong and ill thought out” and is “about as naked an abuse of government power as could be imagined.” Those are strong criticisms from respected legal scholars and nothing in Judge Sotomayor’s testimony reassured me about her opinion in the *Didden* case.

Following the hearing, I remain concerned that Judge Sotomayor’s hostility to gun rights, abortion restrictions, and property rights, among others, stem from a “personal prejudice” that will influence her decisions once she is untethered from precedent. It is true that she has an extensive record on the bench; however, the Senate’s inquiry into Judge Sotomayor’s suitability for the Supreme Court cannot merely rest on an overview of the cases she decided when she was constrained by precedent. Judge Sotomayor’s extra judicial statements are critically important to our examination of her fitness for a seat on the Supreme Court because when a judge is free from the confines of precedent—as she was in her speeches and as she will be if she is a Supreme Court Justice—she shows her true colors and passions.

So the question remains, which Judge Sotomayor are we getting? Will Judge Sotomayor follow in the footsteps of Justice Ginsburg or will she adhere to her testimony during her hearing that she will strictly apply the law to the facts? Will she revert back to the judicial philosophy she espoused prior to the hearing, the same way she reverted back to her prior statements on the use of foreign law by American judges? Because I am not convinced that she can put aside her personal politics and preferences, I regretfully must oppose her nomination.

I am pleased to come to the floor today to talk about our Supreme Court selection process. Judge Sotomayor is the third Supreme Court candidate I have had the privilege of getting to know, interview, and ask rigorous questions of during the hearing. She has a miraculous and wonderful personal story. She is very accomplished. She is to be admired for what she has accomplished.

When we look at Supreme Court nominees, we are actually charged to do two things. One is to look at their record of judicial behavior and assess it, and then also to look at their record that is out there besides their judicial decisions. We did a very thorough job in analyzing her 15-plus years as a Federal judge and appellate judge. There

were some very concerning cases that we encountered for which we questioned her, and the record will fully show her defense of that record and the reversal rate that she had at the U.S. Supreme Court.

It is interesting for the American public to know that a Supreme Court Justice is much different than an appellate judge or even a Federal circuit judge because they, in fact, are not bound by precedent. As an appellate judge they have to follow precedent, and when they don't they get reversed, and Federal circuit judges have to follow precedent or they get reversed. But a Supreme Court Justice has the freedom to change precedent, and that is why the inquiry into the candidacy and the qualifications of a Supreme Court nominee is so important. It is also why our Founders wrote extensively on what should be the qualifications of a Supreme Court Justice.

Alexander Hamilton stated in *Federalist Paper No. 78*: "The interpretation of the law is the proper and peculiar province of the courts."

He further stated that it was "indispensable in the courts of justice" that judges have an "inflexible and uniform adherence to the rights of the Constitution." A nominee who does not adhere to these standards necessarily rejects the role of a judge as dictated by the Constitution and should not be confirmed.

When we look at the Constitution, we are told in the Constitution how judges are to decide cases. They are given three strict parameters. One is they are to look at the Constitution each and every time. No. 2 is they are to look at the statutes that have been passed by the people's representatives, and they are to look at the facts. They are to look at the facts in a way that will show never a bias—in other words, blind justice—looking at those critical factors of what are the facts of the case, what is the law, and what does the Constitution say.

You can be an appellate court justice for 50 years in this country and still not qualify to be a Supreme Court Justice. It is tremendously important who goes on the Supreme Court. The reason it is important is because we have had a tendency in the last three decades to abandon those three principles and use other principles.

Let me mention two of them. One is that we consider foreign law, that we can become enlightened with foreign law. I don't doubt that we can become enlightened with what other people in the world think about law, but the fact is our Founders said: This is our law. The Constitution is our law. And we have a way of setting law which comes through the Congress. That is what we shall look at with one exception, and that is on trade and treaties where we have to consider the agreements and foreign laws related to those treaties.

The other tendency which has been espoused by our President is an empathy standard, that we can somehow—

other than looking at the three main parameters of which our Founders told us we must use in deciding cases at the Supreme Court. Well, I will tell you that a standard other than looking at the facts and looking at the law and looking at the Constitution doesn't meet the test of our Founders nor does it meet the test of our Constitution as it is spelled out in our Constitution.

I wish to say as an American citizen, I think we should all be proud of this nomination: a Hispanic female coming to the Supreme Court. But that is not a good enough reason to say somebody should become a Justice. So I go back to those three founding principles of who should qualify. And who should qualify is somebody who is going to strictly adhere to what our Founders said was the job of a Supreme Court Justice, not with parameters that have been discussed as maybe to be OK or parameters that fall outside of what our Founders said.

During my questioning and my visits with Judge Sotomayor, I found some very disturbing things. I asked her specifically in the hearing: Do individuals have a fundamental right to self defense? She wouldn't answer yes to that question. Now, a fundamental right to self-defense predates our Constitution. That is what liberty is all about. That is one of the bedrocks of our liberty. And the fact that she will not agree that we as U.S. citizens have a fundamental right to self-defense is extremely troubling.

The reason that fundamental right is so important, and it is guaranteed in the Constitution, is because on that rests the second amendment for which I find her somewhat less than comfortable in accepting what our Founders said in the second amendment, adopted almost 200-and-some-odd years ago.

The second area I have concern with is in the area of property rights. It is very explicitly stated, and it is clear except in two cases in this country in the Supreme Court, which I hope that someday will be reversed, that our right to property is a real right. There was a *Kelo* decision that has markedly limited American citizens' rights to property. On both her cases and her comments and her written testimony, I believe that right of Americans is at risk. I believe judges are going to decide we don't have that fundamental right. I believe she believes, based on what she has ruled and what she has written and what she has said, that, in fact, there are times when judges can decide whether we have that right. That is inherently wrong and 180 degrees against what our Constitution guarantees us as individual citizens.

The final area has to do with the use of foreign law. In her speeches and statements she was highly critical of people who were critical of the use of foreign law. Upon questioning in the committee, she retracted and moved away from those statements. I specifically asked her if she would assure the

committee that she would, in fact, never use foreign law to decide U.S. cases. I got her to say yes.

The only problem with that is, in the answer to questions following the hearing, she backtracked 180 degrees from that statement which matched her previous statements in speeches and writings which caused me to ask the question in the first place. So in the area of property rights, in the area of the second amendment and the fundamental right to self-defense, and in the area of foreign law, I believe her viewpoint is something other than what I see in the Constitution.

Regrettably, I believe that disqualifies her from being a Justice of the Supreme Court. That when, in fact, we look at the constitutional basis of how judges are instructed to make law and to decide law—because every decision makes law; it sets precedent—that when we extract from that the fundamental right of self-defense, the written, specific right to the second amendment, the written specific right of property ownership and due process associated with that, and then we lay on top of that the idea that it is more important for us to look good in our decisions to foreign governments than it is to follow the oath, to follow the Constitution of the United States—make no mistake, I believe this is a wonderful woman, and I think she has done a fairly good job as a judge on the appellate court, but she has been constrained—as we measure her writings and her words with her decisions on cases, what we find is a conflict for those who would strictly follow what the Constitution tells us.

I want our grandchildren to endure and to accept and hold the same freedoms we have. A U.S. Supreme Court Justice will determine that; just one can determine that. So I regrettably announce and state that I will not be able to vote for this very fine woman. But I would also state that we need to be very concerned and very vigilant as we see the Supreme Court make decisions, whether they are sitting Justices today or Justices to come, who violate both the intent, instruction, and the spirit of the U.S. Constitution.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. SNOWE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. SNOWE. Mr. President, I rise to speak to the nomination of Judge Sonia Sotomayor to be the next Associate Justice of the Supreme Court of the United States.

After a careful and considerate review of her testimony before the Senate Judiciary Committee and her overall record, her distinguished judicial background, and a personal meeting

with her in June, I have concluded she should be confirmed as the next Associate Justice of the Supreme Court.

I have not arrived at my decision lightly. It has been said that, of all the entities in government, the Supreme Court is the most closely identified with the Constitution—and that no other branch or agency has as great an opportunity to speak directly to the rational and moral side of the American character; to bring the power and moral authority of government to bear directly upon the citizenry.

The Supreme Court passes final legal judgment on the most profound social issues of our time. The Court is uniquely designed to accept only those cases that present a substantial and compelling question of federal law; cases for which the Court's ultimate resolution will not be applied merely to a single, isolated dispute—but, rather, will guide legislatures, executives, and all other courts in their broader development and interpretation of law and policy.

In the end, ours is a government of both liberty and order, State and Federal authority, and checks and balances. The remarkable challenge of calibrating these fundamental balance points is entrusted ultimately to the nine Justices of the Supreme Court of the United States.

To help meet this extraordinary challenge, any nominee for the Court must, as I stated during the confirmations of Chief Justice John Roberts and Associate Justice Sam Alito, have a powerful intellect, a principled understanding of the Court's role, and a sound commitment to judicial method. A nominee must have the capacity to engender respect among the other justices in order to facilitate the consensus of a majority. And to warrant Senate confirmation, the nominee must have a keen understanding of, and a disciplined respect for, the tremendous body of law that precedes her.

It is with these high standards that we should evaluate the record of Judge Sonia Sotomayor. Reviewing her professional credentials, it is clear that Judge Sotomayor is well qualified. She has served for nearly 11 years on the U.S. Court of Appeals for the Second Circuit where she has participated in over 3,100 cases. The judge also previously served on the U.S. District Court for the Southern District of New York for six years where she decided over 400 additional cases. She also worked for 8 years in private practice and 4 years in the highly respected office of the district attorney for the County of New York. According to the White House, if confirmed, Judge Sotomayor would bring more Federal judicial experience to the Supreme Court than any Justice in 100 years, and more overall judicial experience than anyone confirmed for the Court in the past 70 years. So I applaud the President for selecting an individual who clearly possesses the professional credentials to serve on the Court.

In reviewing her personal credentials, Judge Sotomayor's accomplishments are equally noteworthy. If confirmed, she will become the first Hispanic and only the third woman ever to serve on our Nation's highest Court. Along the way, she has ascended from modest means to excel in our country's most prestigious schools and our judiciary's highest offices. In doing so, she now stands as a model for others to follow in summoning their own courage to break barriers and pursue dreams. And she does so with a personal manner that I find to be refreshingly candid and forthright.

This brings us to the more particular factors we must consider when providing our consent on a President's nominee for Associate Justice—judicial temperament, methodology, integrity and philosophy. By their very nature, these attributes are often challenging to measure, but they can be ascertained through a careful analysis of a nominee's complete record.

With regard to the first consideration, judicial temperament, we all agree that it is absolutely essential that a judge be fair, open-minded, and respectful. Our citizens simply must have confidence that a judge who weighs their legal claims does so with an even temperament. A judge must be truly committed to providing a full and fair day in court, while projecting a sincere equanimity and respect for the law. When these attributes are not clearly present in our judges, the public justifiably begins to lose faith in the integrity of our courts.

This issue has been rightly explored and satisfactorily answered with Judge Sotomayor. For example, both the New York City and American Bar Associations who reviewed the nominee on all key criteria gave the judge their highest ratings. Robert Morgenthau, the judge's former employer and highly regarded district attorney of New York County since 1975, testified that the judge is "fair," "non-political," and "highly qualified for any position in which a first-rate intellect, common sense, collegiality and good character would be assets." And former Federal judge, colleague, and FBI Director Louis Freeh, has called Judge Sotomayor "fair, neutral, nonpartisan [and] open-minded . . ." And, indeed, I believe that the Judge's professional manner was in evidence during all aspects of her 4-day appearance before the Judiciary Committee.

We look next at the nominee's judicial methodology which directly reflects her commitment to the essential tenets of care, discipline and fairness. Here, the judge was very clear and direct in our June meeting. Her approach to all cases is to carefully identify the facts—what she characterized as a prized skill that she learned as a successful young prosecutor—and then follow the law: What it says; what end was meant to be accomplished; what legislative intent it was meant to advance; and how, if at all, other courts have answered those questions.

As the judge elaborated, she believes that the law can and should develop, but that such development should occur only "incrementally" through the measured development of analogous cases. And when I asked her which opinions best reflect her judicial method, Judge Sotomayor candidly replied, "Read any of my opinions and you will see my structure." And the record supports that assertion—the structure of her opinions shows a consistent, methodical and careful approach to deciding cases.

As she testified at her hearing, her methodology is to "apply the law to the facts at hand" and keep a "rigorous commitment to interpreting the Constitution according to its terms; interpreting statutes according to their terms and Congress's intent; and hewing faithfully to precedents . . ." She stated further her view that the "process of judging is enhanced when the arguments and concerns of the parties to the litigation are understood and acknowledged. . . . That is why," she explained, "I generally structure my opinions by setting out what the law requires and then by explaining why a contrary position, sympathetic or not, is accepted or rejected. That is how I seek to strengthen both the rule of law and faith in the impartiality of our justice system."

Indeed, the integrity of the judge's methodology can be measured in a variety of ways. First, the judge has a low reversal rate. Research on Judge Sotomayor's performance on the trial court demonstrates she was overruled in only 6 of her over 400 trial bench decisions. Westlaw reports that, in her 11 years on the appellate court, the judge has participated—as I referenced earlier—in over 3,100 cases and, of those cases, the White House reports that the Judge has only been reversed another six times. In each of those circuit cases she was part of a unanimous three-judge panel, and the cases involved the interpretation—not of important constitutional provisions—but of very technical statutes that, in several instances, had created clear divisions of opinion among several of the circuit courts.

Moreover, three of the six circuit cases created 5-4 opinions in the Supreme Court, one created a 6-3 split, and one produced this unusual alignment: Justices Ginsburg and Scalia together in the majority, and Justices Breyer and Alito together in dissent. These facts combine to show the relative difficulty of, and the reasonable room for debate in, these appellate cases.

Next, there is the measurement of the judge's concurrence and dissent rates. There, the data demonstrate that the judge's method of deciding cases is consistent with that of her colleagues on the Second Circuit. For example, research sources indicate that, despite the thousands of her appellate opinions, Judge Sotomayor has only dissented in 21 cases, and has written

separate concurring opinions in only 22 others.

Finally, there is the degree to which other courts and scholars find the judge's method of decision worthy of citation. There, data compiled by law professors and students from three universities reveal that, between 1999 and 2001, the judge's opinions were cited by other courts and scholars at meaningful rates—4.4 court citations and 4.6 law review citations per opinion. And between 2004 and 2006, those rates rose to 8.5 court citations and 4.8 law review citations per opinion. These more recent rates are not only higher than the percentage of citation rates for other distinguished Federal appellate judges, they underscore the increasing respect that Judge Sotomayor's work is garnering.

I turn now to the third qualification: judicial integrity. Here, there are those who have suggested that the judge will use her office to engage in "judicial activism" and advance a certain social or political agenda that suits her personal preferences. Principally, these critics point to the New Haven firefighters' case and her Berkeley and Duke speeches as examples of such activism, and I believe these instances have warranted strict scrutiny.

At the outset, it bears noting the White House report that, in her 11 years on the Second Circuit, Judge Sotomayor has agreed with the result favored by the Republican appointees in 95 percent of the published panel decisions where the panel included at least one judge appointed by a Republican president. This statistic is evidence of a nonpartisan or nonideological approach to judging.

At the same time, I have shared the concerns expressed specifically about the New Haven firefighters' case—as many have voiced opposition to both her decision as well as the curt and summary opinion that was used to dismiss the complaint. I sympathize with the plaintiffs, who were told the rules for qualifying for a promotion, who believed they were participating in a fixed process for determining their future career advancement, who did what was asked of them, and then, when it was all over, were informed that what they had done wasn't good enough. So I understand the frustration.

I approached Judge Sotomayor's handling of this case by looking at both the merits—that is, what was decided in the case, as well as the process, or how, the case was decided. As regards the process, as we all well know, the panel that included Judge Sotomayor wrote only a three-paragraph opinion concluding that, "We affirm, for the reasons stated in the thorough, thoughtful, and well-reasoned opinion of the court below."

Now, it may well be that the district judge's opinion was "thorough, thoughtful, and well-reasoned." But the confidence of the litigants and public alike in any court relies on their opportunity to explore a judge's ration-

ale. And the panel's summary affirmation, albeit adopting verbatim the long opinion of the court below, simply failed to meet that expectation.

When I asked Judge Sotomayor in our June conversation—and when she was queried before the Judiciary Committee—she stated that she and her colleagues gave the case their full attention and review, and that only after that full and fair consideration did they determine that their own written opinion was not necessary, given the district court's exhaustive 48-page opinion applying the seemingly clear "four-fifths rule" of the EEOC regulations and the seemingly settled precedent of what the Judge referred to in her testimony as the Bushy line of cases—this is *Bushy v. New York State Civil Service Commission*, *Kirkland v. New York State Department of Correctional Services*, and *Hayden v. County of Nassau*. In reviewing a petition for rehearing in *Ricci*, six of the Judge's own colleagues were not persuaded by that argument. Yet, another six of her colleagues were so persuaded.

Additionally, the judge testified before the Judiciary Committee that "the practice is that about 75 percent of circuit decisions are decided by summary order, in part because we can't handle the volume of our work if we were writing long decisions in every case; but more importantly, because not every case requires a long opinion if a district court opinion has been clear and thorough on an issue . . ."

Yet, the bottom line is, in my view, this particular case was simply too sensitive and complex—with significant societal implications—to leave to a summary order. And, therefore, the three-judge panel should have issued its own, comprehensive opinion and explanation.

On the matter of the merits of the case, Judge Sotomayor ruled that the city acted lawfully in trying to meet its obligations under Federal employment discrimination law to avoid disparate impact discrimination when making certain employment promotions. And I understand some believe this decision evinces the judge's predisposition to rule for minority litigants. One well-respected DC law firm, however, has found that the judge has decided nearly 100 race-related cases in her 11 years on the Second Circuit, and has effectively rejected such race-related claims by a margin of "roughly eight to one."

Others have suggested that the Supreme Court's reversal of the Second Circuit raises questions of the judge's qualifications to serve. In evaluating that possibility, I have taken into account that the Supreme Court took this action with a 5-4 vote, with four complex and nuanced opinions, as well as an admission from Justice Scalia that the underlying question presented by the case—when affirmative action becomes unlawful discrimination—is "not an easy one."

And I have considered that the High Court reached its decision only by

identifying and applying an entirely new standard. Indeed, both the trial and Sotomayor courts applied the then-existing "four-fifths rule" of the EEOC title VII regulations and the seemingly settled circuit precedent of the "Bushy line of cases" in determining that a significant disparity in the results of an employment test is itself adequate evidence of unlawful disparate impact discrimination.

On appeal, the Supreme Court changed the rule, saying in essence that such a significant disparity in test results is no longer itself adequate evidence. Importing anew from 14th amendment jurisprudence, the Court said that the new rule for interpreting the title VII statute demands a "strong[er] basis in evidence," such as evidence that the test was "not job related and consistent with business necessity, or if there existed an equally valid, less discriminatory alternative that served the city's needs but that the city refused to adopt."

Therefore, based on the record, it would appear the district and circuit judges fulfilled their assigned job of applying existing precedent to the existing rule. And in weighing all of the facts, given Judge Sotomayor's assurance to me and the committee that she gave the case her full consideration, given her established reputation for careful decision-making, and given the daily reality of the Second Circuit's burgeoning caseload, particularly with the surge of post-September 11 immigration cases, I cannot conclude that the decision in *Ricci* should itself disqualify this nominee.

Mr. President, I was also concerned—like many Americans—by Judge Sotomayor's speech at Berkeley in 2001, and specifically by the following line that appears to suggest that the judge decides cases more by personal identity than by fidelity to the law:

I would hope that a wise Latina woman . . . would more often than not reach a better conclusion than a white male. . . .

To thoroughly examine this question with regard to the judge's qualifications, I believed it was necessary to review both the entirety of her speech, as well as her testimony before the Senate Judiciary Committee, to understand to the fullest extent possible her intention behind those comments, because I agree that they are disconcerting.

In that light, I note that the judge, in answering a question from the committee, offered that it is the job of a judge to apply the law, and that it is the law, rather than one's own sympathies, that "compels conclusions in cases."

I also recall the judge's response when I asked her specifically about this speech during our opportunity to meet one-on-one. I said that commentators had criticized that portion of her speech because it suggested that gender and ethnicity enable her to make "better" decisions than a male judge of a different ethnicity. Judge

Sotomayor, in replying, suggested that those who have concerns must “read the whole speech;” that she was only trying to say—she admits now inartfully—that “judges are human beings and they necessarily will be affected by who they are. But this only makes them attuned to certain case aspects; it does not replace following the law.”

In evaluating these responses, I recalled prominent judges in our history who also raised this issue.

Indeed, this was the subject to which Justice Felix Frankfurter referred to when he said, long ago, that one of the greatest challenges for all judges, because they are all human, is to recognize their own personal views and develop the patience, insights and discipline to compensate for them. When I raised Justice Frankfurter’s comments personally with Judge Sotomayor, she agreed and asserted that was “exactly” the point she was attempting to communicate in her Berkeley speech.

She also asserted in our meeting, and reaffirmed in her committee testimony that, “no racial or ethnic group has a market on sound judgment.” She explained that some judges, like many lay people, have “tin ears” on certain matters, and that is why the collegial decision-making is so vital—because sharing different perspectives and blending them into consensus opinions serves as both a “spotlight and a filter.” She spoke of how judges, like all people, are inescapably affected by their own life experiences, but that those experiences only affect how “attuned” judges are to certain aspects of cases. They do not replace the requirement to follow and apply the law consistent with the limited role and specific oath of their office.

A review of Judge Sotomayor’s decisions and her resulting affinity, dissent and reversal rates that I described earlier bolster the judge’s statements that she understands this imperative—and that she decides cases based not on personal identities or classifications, but by “fidelity to the law.”

A final question about the judge’s judicial integrity has been raised from her remark in 2005 at Duke University that the “Court of Appeals is where policy is made.” This comment has understandably raised the specter of a commitment to judicial activism, and is therefore a legitimate cause for examination. When I raised this issue with the judge she responded that she was referring to the educational difference between trial and appellate court clerkships—how a trial court clerkship focuses primarily on resolving limited factual disputes and how an appellate court clerkship focuses primarily on cases involving broader questions of how the law ought to be interpreted.

An essential component of weighing the competing interpretations proffered by appellate advocates is for the court to understand the practical effect of the advocates’ competing argu-

ments. It is this understanding that defines the scope and reach of the possible interpretations. I believe it is therefore legitimate to read and understand her comments within this context. It has also been argued that—as the Supreme Court only accepts and decides about 80 of approximately 8,000 cases per year, Federal circuit courts of appeal often do, as the judge noted in her testimony effectively become the final decisionmaker on what the law—and by necessary extension, the policy it advances—is.

Given all of these factors, again, in considering the entirety of her record, it is fair to conclude that the Duke University speech is not evidence that Judge Sotomayor would practice judicial activism on the Supreme Court.

Finally, we have a fourth and final qualification—judicial philosophy, judge’s sense of limits and horizons and great promises of our Constitution and the nominee’s view of the proper role of the Supreme Court in deciding whether to take cases and, once taken, the underlying philosophy used to rule upon them.

On this point, I note first the judge’s answer when asked whether she subscribes to one or another school of constitutional interpretation. She said: “I don’t use labels.” I also recall the study by the New York University Law School’s Brennan Center for Justice which analyzed over 1,100 constitutional cases decided during Judge Sotomayor’s tenure on the second circuit and found as an appellate judge, she voted with the majority in over 98 percent of constitutional cases and that 94 percent of her constitutional decisions have been unanimous. Such figures argue strongly that the judge’s constitutional approach is squarely in the mainstream.

The inquiry into any nominee’s judicial philosophy is particularly significant for those of us who value the Court’s landmark rulings. Decisions protecting the rights of privacy, civil rights, and women seeking equal protection in the workplace—to name a few—comprise a crucial and settled body of the Court’s case law. Entire generations of Americans have come to live their lives in reliance upon the Court’s rulings in these key areas, and overruling these precedents would simply roll back decades of societal advancement and impose substantial disruption and harm.

Therefore, central to the question of this nominee’s judicial philosophy are her views on one of the cornerstones of jurisprudence, and that is judicial precedent.

In our June meeting, I asked whether she agreed with Chief Justice Rehnquist’s observation in *Dickerson v. United States* which upheld the famous decision *Miranda v. Arizona*. There, the Chief Justice wrote there are situations where constitutional precedent—that a Justice might have believed had been wrongly decided—should nevertheless be upheld because

the people have accepted the principle of the decision as an “embedded . . . part of our national culture.” Judge Sotomayor agreed with that position.

This expressed adherence to applying precedent has achieved significance in many passionately contested areas of the law, such as the second amendment, which brings me to the concerns raised with respect to Judge Sotomayor’s decision in *Maloney v. Cuomo*. I happen to be a strong, long-time defender of second amendment rights, as evidenced by my amicus support for Mr. Heller in his recent case before the Supreme Court, in *District of Columbia v. Heller*. Accordingly, I am very well aware the issue of whether second amendment protections are to be construed as incorporated against acts of a State government—as opposed to the Federal Government—has assumed renewed importance and visibility since the Court’s recent landmark decision ruling in *Heller*.

I also understand that several longstanding Court precedents have been widely construed by State and Federal courts around the country, including the Maine Supreme Judicial Court, not to incorporate the second amendment. Judge Sotomayor in *Maloney v. Cuomo*, and her two panelists, have stated that those consistent interpretations of the Supreme Court’s precedent were binding upon them. And while a panel in the ninth circuit in *Nordyke v. King* bypassed such precedent, a seventh circuit panel, led by Judge Shakley, sharply criticized the Nordyke decision for doing so, and instead in *NRA v. City of Chicago* agreed with Judge Sotomayor’s opinion because they, too, concluded that the Supreme Court’s precedent was binding upon them. Last week, the full ninth circuit itself agreed to reconsider its decision in the Nordyke decision.

The Supreme Court may well revisit this issue soon. But the issue before us in the Senate right now is whether the judge has demonstrated, as she describes, “fidelity to the law” and precedent as we would expect—because several longstanding Supreme Court precedents have been widely construed by State and Federal courts alike not to incorporate the second amendment, and because the Supreme Court in footnote 23 of the *Heller* majority opinion expressly said the Court was not deciding the incorporation question. Moreover, given her demonstrated adherence to stare decisis, while no one can predict the future with certainty, it is reasonable to conclude she will continue to follow precedent, as also evidenced by her testimony to the Judiciary Committee in which she stated:

The Supreme Court did hold that there is in the second amendment an individual right to bear arms. And that is its holding, and that is the Court’s decision. I fully accept that.

Finally, what a powerful and profound message it will send to have Judge Sonia Sotomayor join with Justice Ruth Bader Ginsburg on the highest Court in the land. The fact is, it



does make a difference who women and girls see at the pinnacles of government, just as it matters in all fields of endeavor. As Justice Ginsburg has said recently:

My base concern about being all alone was the public got the wrong perception of the Court. It just doesn't look right in the year 2009 . . . It matters for women to be here at the conference table to be doing everything that the Court does . . . Women belong in all places where decisions are being made.

Given the totality of the record before us, I have concluded from Judge Sotomayor's testimony regarding both her judicial methodology and her judicial philosophy that she is not predisposed to overturning settled precedent. Obviously, none of us can know with certainty how Judge Sotomayor would vote on any particular case. But we can assess her methodology and analysis in approaching cases by reviewing her responses to the committee and to other Members throughout this process.

In that light, in evaluating the essential qualifications as I have outlined them, and reviewing the entire judicial record of Judge Sotomayor, I find a fairminded judge with a deep respect for the rule of law and the independence of the courts, and a judicial method committed to stability in the law. It is, therefore, my conclusion that based on the totality of the record and her distinctive qualifications, Judge Sonia Sotomayor has earned the distinction of serving as the next Associate Justice of the Supreme Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. I ask the Presiding Officer to inform me when 2 minutes is left of my time.

Mr. President, I rise today to discuss the nomination of Judge Sonia Sotomayor to be a Justice of the U.S. Supreme Court. Ultimately, the core of this debate, I believe, is over the proper role of the Court. Our side tends to believe that the Court does not make policy and must stay within the written text of the Constitution. The other side sees the Constitution more often as a living document and that its meaning changes along with the attitudes of society.

When the courts improperly assume the power to decide issues more political than legal in nature, the people naturally focus less on the law and more on the lawyers who are chosen to administer it. Some are key to impose their policy agendas through the judicial process. Others want judges who will stick to interpreting the law rather than making it. It is beyond dispute that the Constitution and its Framers intended for judges to satisfy the latter criteria; that is, to stay within the law rather than making it.

President Obama has voiced his support for judges looking to the Constitution as a living document malleable to the times. He has said he will pick judges who will look to empathy rather

than written law when deciding cases. When then-Senator Obama voted against the confirmation of Chief Justice John Roberts, he said this:

[W]hile adherence to legal precedent and rules of statutory or constitutional construction will dispose of 95 percent of the cases that come before a court, so that both a Scalia and a Ginsburg will arrive at the same place most of the time on those 95 percent of the cases—what matters on the Supreme Court is those 5 percent of cases that are truly difficult. In those cases, adherence to precedent and rules of construction and interpretation will only get you through the 25th mile of the marathon. That last mile can only be determined on the basis of one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy.

I don't dispute that there is a small percentage of cases that are truly difficult. But the question is: Do we want these cases decided by what the law says or by a judge's own personal empathies? I reject the idea that these cases cannot be resolved by staying faithful to the text of the Constitution, and it is dangerous to the rule of law to suggest otherwise.

In June, I came to the floor and stated my opposition to Judge Sotomayor's nomination based on numerous past statements she made embracing an activist judiciary and endorsing the idea that judges should look to areas outside of the law when deciding cases. However, when Judge Sotomayor appeared before the Judiciary Committee last month, she consistently took positions contrary to her past writings and, in many cases, did a complete 180. This leads me to ask which Sotomayor are we voting to confirm—the liberal activist or the modest judge who believes in strictly applying the law as written?

Judge Sotomayor attempted to assure Senators that the real Sotomayor is reflected in her 17-year record on the bench. I find this argument interesting but unpersuasive, because as a judge on the court of appeals, Judge Sotomayor has been constrained by Supreme Court precedent. That is the position she held. Her judicial record tells us very little about who the real Sotomayor will be when on the Supreme Court. It is in her speeches and writings where she is unrestrained that we find the real views on the fundamental questions that she will decide as a Justice on the Supreme Court.

When asked at her confirmation hearing to summarize her judicial philosophy, she said: "Fidelity to the law." I completely agree with this philosophy, but I have difficulty reconciling the words she chose at her confirmation hearing with the statement she made in 1996 at Suffolk University Law School when she stated: "The law that lawyers practice and judges declare is not a definitive capital 'L' law that many would like to think exists." The only reasonable interpretation to that is that she pledges fidelity to whatever she says the law is.

In a 2001 famous speech she gave to Berkeley Law School, which was later

published in the Berkeley La Raza Law Journal, she dismissed the idea that "judges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law," saying that "by ignoring our differences as women or men of color, we do a disservice both to the law and society." This certainly doesn't sound like a judge who believes in fidelity to the law.

In the same speech, Judge Sotomayor famously said:

Justice O'Connor has often been cited as saying that a wise old man and a wise old woman will reach the same conclusion in deciding cases. I am not so sure that I agree with that statement. I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.

When asked about this statement at her confirmation hearing, Judge Sotomayor said:

The words I used, I used agreeing with the sentiment that Justice Sandra Day O'Connor was attempting to convey.

Really? Are we really supposed to believe that each time Judge Sotomayor said, "I'm not so sure I agree with that statement," she actually meant "I agree with that statement"? Judge Sotomayor's explanation requires some suspension of disbelief.

Also at Berkeley, Judge Sotomayor said:

Whether born from experience or inherent physiological or cultural differences, our gender and national origins may and will make a difference in our judging.

At her hearing, she said:

I do not believe that any ethnic, racial, or gender group has an advantage in sound judging.

Again, are we being asked to believe that Judge Sotomayor is either a very poor communicator or her past statements have been continually taken out of context and misinterpreted? I don't think she is a bad communicator at all.

In her writings, Judge Sotomayor has repeatedly rejected the principle of impartiality and embraced the novel idea that a judge's personal life story should come into play in the courtroom. But when she was in front of the Senate Judiciary Committee, with the Nation watching, she suddenly embraced the judicial philosophy of Chief Justice Roberts.

The past positions simply cannot be reconciled with what she said before the Judiciary Committee. We do not know what she actually believes.

In a 2005 appearance at Duke University Law School, she said, "The court of appeals is where policy is made." During her confirmation hearing, she said, "Judges don't make law" and they "look at the Constitution and see what it says."

Even some of Judge Sotomayor's defenders have criticized her flip-flopping on her views. Georgetown Law Center professor Louis Michael Seidman, a liberal constitutional law scholar, said:

I was completely disgusted by Judge Sotomayor's testimony today. If she was not perjuring herself, she is intellectually unqualified to be on the Supreme Court. If she was perjuring herself, she is morally unqualified.

There was never any doubt that this President would nominate liberal judges who shared his views. He won the election. Judge Sotomayor's record on the bench has been fairly typical of a liberal judge. However, there have been some notable exceptions.

After the Supreme Court ruled that individuals have a constitutionally protected right to gun ownership in the case of *District of Columbia v. Heller*, *Maloney v. Cuomo*, another second amendment case, was argued in front of the Second Circuit. In a per curiam opinion issued by a panel that included Judge Sotomayor, the Second Circuit ruled that "the Second Amendment applies only to limitations the Federal Government seeks to impose on this right." They also said:

Legislative acts that do not interfere with fundamental rights or single out suspect classifications carry with them a strong presumption of constitutionality and must be upheld if rationally related to a legitimate state interest.

In other words, the second amendment does not protect a fundamental right. I believe the second amendment protects a fundamental right, just as the first amendment protects a fundamental right. The Supreme Court agrees it protects a fundamental right, and the Founders most certainly believed there was a fundamental right to keep and to bear arms.

In a high-profile racial discrimination case, Judge Sotomayor's panel issued an unpublished summary order denying a group of firefighters a promotion they had earned because the promotion exam had a disparate impact on minorities. Sotomayor and her two colleagues' actions were troubling because by issuing an unpublished summary order, they avoided bringing the case to the attention of other judges on the Second Circuit. It was only after another judge of the circuit read about the case in a New Haven newspaper and requested that the full Second Circuit rehear the case that Sotomayor's actions came to light. The case was eventually appealed to the Supreme Court, and in a 5-to-4 opinion, the Court reversed the Second Circuit. Perhaps even more importantly, the Court was unanimous—unanimous—in rejecting Sotomayor's opinion that simply having a disparate racial impact was justification to void the test. The dissenters at the Supreme Court believed a jury trial should have been granted to examine the evidence and determine whether the test was job related. Sotomayor clearly erred in her decision.

Judge Sotomayor was nominated by a President who said judges should have "the empathy to recognize what it's like to be a young teenaged mom; the empathy to understand what it's like to be poor or African-American or

gay or disabled or old," and that difficult cases should be decided by "what is in the justice's heart."

When asked about President Obama's empathy standard by Senator KYL, Judge Sotomayor said this:

I wouldn't approach the issue of judging in the way the President does. He has to explain what he meant by judging. I can only explain what I think judges should do, which is judges can't rely on what is in their heart.

Are we really to believe the President chose a nominee who outright rejects his view of justice? I am concerned that the President has, in fact, nominated an individual who shares his view that the Constitution is a living document, and that is why I will be voting against her confirmation.

After watching her performance in front of the Judiciary Committee last month and observing that performance, I learned something I have long suspected: Judge Sotomayor had no choice but to reverse many of her past statements. A judge who openly embraces an activist judiciary, using empathy to pick winners and losers, using his or her own race and gender to decide the outcome of cases, using foreign law, who does not believe the second amendment is a fundamental right and sees judges as policymakers—all those things—is a judge who cannot be confirmed by this body despite 60 Members belonging to the party of the President.

I hope President Obama has learned that important lesson as well, that the people of the country want a Justice on the Supreme Court to be a justice and not a policymaker; to be a judge and not somebody who goes with the sympathies in their heart; someone who sticks with the Constitution and does not try to rewrite it. If the President realizes that, it will be a victory for the rule of law. And that is what this is about.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARDIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CARDIN. I ask unanimous consent that the time in this hour be divided in the following manner: Senator CARDIN, 15 minutes; Senator BAUCUS, 15 minutes; Senator MERKLEY, 10 minutes; Senator AKAKA, 10 minutes; and Senator LIEBERMAN, 10 minutes.

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

Mr. CARDIN. Mr. President, the confirmation of Judge Sonia Sotomayor to be Associate Justice to the Supreme Court will be my first Justice confirmation vote as a Senator. It is an honor for me to represent the people of Maryland in the Senate and to serve on the Judiciary Committee. I particularly thank Chairman LEAHY and

Ranking Member SESSIONS for the dignified manner in which the committee handled the nomination process of Judge Sotomayor. Each Senator on our committee had ample time to review Judge Sotomayor's background and ask questions of the nominee. Her answers were as responsive as possible and gave me confidence that she understood the appropriate role of a judge in applying the law.

The Supreme Court, our Nation's highest Court, holds a tremendous responsibility in deciding cases of fundamental issues that have real impacts on the lives of Americans. In recent years, we have seen less of a consensus on the Court, with many 5-to-4 decisions. Regrettably, too many of these decisions have been at times when the Court has ignored congressional intent and precedent to instead move forward with its own agenda. It has been the so-called conservative Justices who have been the most active in ignoring the intent of Congress in protecting individual rights. For example, in the *Ledbetter* decision, the Court denied women a remedy against employer discrimination pay equity cases, thus eliminating protection intended by Congress. In the *Rapanos* decisions, the Supreme Court narrowed the congressional protections for clean water. In the Northwest Austin Municipal Utility District decision, the Court challenged congressional authority to extend the Voting Rights Act. In each of these cases, the Supreme Court actively ruled to restrict laws passed by Congress to protect individual rights. I want the next Justice to respect legal precedent and congressional intent and advance, not restrict, individual rights.

In determining whether to support Judge Sotomayor for this lifetime appointment, I looked at several factors. First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to each and every American. I also believe each nominee must embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests. I believe a judicial nominee must respect the role and responsibility of each branch of government. I look for a strong commitment and passion for continued progress in civil rights protections.

I understand there is a careful balance to be found. Our next Justice should advance the protections found in the Constitution but not disregard important precedents that have made society stronger by embracing our civil liberties. I believe Judge Sotomayor understands this balance and will apply these principles appropriately.

During the hearing, we all learned more about Judge Sotomayor's approach to the law and to judging. She clearly outlined for us her fidelity to the law, respect for precedent, and due deference to the intent of Congress. With each question, our committee and the American public gained a greater

appreciation of Judge Sotomayor's knowledge of and commitment to the rule of law. Her command of legal precedent and her ability to challenge attorneys in their arguments will bode well for reaching the right decisions in the Supreme Court. She is mainstream in her judicial decisions and opinions, and she possesses a correct sense of the role of a judge in deciding a case based on sound legal precedent and the facts, giving due deference to congressional intent.

Over the past few months, our committee has had time to thoroughly review Judge Sotomayor's record. From the moment she was nominated by President Obama, we knew Judge Sotomayor had a strong background, including extensive experience as a prosecutor, trial judge, and appellate judge. She grew up in modest circumstances, worked hard to attend two of our Nation's most prestigious universities, Princeton and Yale Law School, and she excelled at the highest levels in each institution. Judge Sotomayor's lifelong work has been recognized by both Democratic and Republican Presidents who nominated her for Senate-confirmed judicial appointments, and for 17 years she has served as a distinguished jurist.

Judge Sotomayor is an example of a highly competent and experienced nominee. She has more Federal judicial experience than any Supreme Court nominee in the last 100 years. She was rated "well qualified" by the American Bar Association, which is the highest rating given by the ABA. She has been supported by the National Fraternal Order of Police, the NAACP, the U.S. Chamber of Commerce, the National Association of Women Legislators, the Brennan Center for Justice, the Lawyers Committee for Civil Rights Under Law, and many more.

The nine Justices of the Supreme Court have a tremendous responsibility of safeguarding the Framers' intent and the fundamental values of our Constitution, while ensuring the protection of rights found in that very Constitution are applied and are relevant to the issues of the day. It is my belief that the Constitution and Bill of Rights were created to be timeless documents that stand together as the foundation for the rule of law in our Nation. Were it not possible for the Supreme Court to apply the basic tenets of the Constitution to changing times, moving beyond popular sentiment, our Nation would never have made the progress it has, improving society for the better. When the Constitution was written, African Americans were considered property and counted only as three-fifths of a person. Non-Whites and women were not allowed to vote. Individuals were restricted by race as to whom they could marry.

Decisions by the Supreme Court undeniably have moved the country forward, continuing the progression of constitutional protections. I believe Judge Sotomayor's record and back-

ground demonstrate that she understands these principles and that she will apply sound legal precedent to contemporary challenges advancing individual rights.

During the confirmation hearing, I spent the majority of my time questioning Judge Sotomayor on the topic of civil rights. We discussed the right to vote, women's rights, minority rights, including race and gender issues, the environment, and the importance of diversity of the courts throughout society. While difficult questions will continue to come before the Court, for me, it bears repeating how important it is to have Justices on the Supreme Court who will apply established precedents and are not tempted to turn back the clock on landmark court decisions that protect individual constitutional rights.

I gained great confidence in Judge Sotomayor after listening to her answers to questions I posed. I wished to mention a few of the key cases decided by Judge Sotomayor that we discussed at the hearing. Judge Sotomayor has protected the civil rights of all Americans, advanced equal opportunity, and promoted racial justice.

In the Gant case, she protected the rights of a young African-American student who was treated differently than his fellow White classmates. In the Boyton case, she looked at the facts presented and reversed and remanded the case because the facts did present a plausible claim of disparate treatment in a housing application process. Judge Sotomayor has also shown an understanding of privacy rights. While we do not have cases to review that she participated in, her responses to questions gave me great confidence that she will respect legal precedent while applying privacy protections to the challenges in the 21st century.

I have confidence that Judge Sotomayor understands the importance of protecting the freedom of speech based on the decisions she reached in the Pappas case, where an off-duty police officer used speech that was repugnant, but her ruling showed an understanding of the importance of constitutional protections, even when the speech is unpopular and hateful.

I have confidence Judge Sotomayor will protect religious freedom based on her decision in the Ford case, where she protected the rights of a Muslim prison inmate. I was particularly impressed by Judge Sotomayor's record on voting rights. In the Hayden case, she wrote in a dissent:

The duty of a judge is to follow the law, not to question its plain terms. I do not believe that Congress wishes us to disregard the plain language of a statute or to invent exceptions in the statutes it has created.

Her commitment on voting rights was reinforced at the hearing when she responded to a question I posed. She acknowledged, unequivocally, that the right to vote is a fundamental right for all Americans. With current Justices

on the Court ready to question Congress's right to extend the basic voting protections of the Voting Rights Act, it is refreshing to hear Judge Sotomayor say in the Hayden case: "I trust that Congress would prefer to make any needed changes itself rather than have the court do so for it."

I have great confidence that Judge Sotomayor understands the importance of civil rights and the importance of protecting those rights for the American people.

I believe Judge Sotomayor will defend Congress's intent with the passage of the Clean Water Act, the Clean Air Act, and many others, based on her decision in the Riverkeeper case. In this case, she wrote for a unanimous panel and held that under the Clean Water Act, the EPA could not engage in a cost-benefit analysis. Allowing cost-benefit analysis would undermine congressional protections, when determining what constitutes the "best technology available for minimizing the adverse environmental impact." She concluded, instead, the test for compliance should consider "what technology can be reasonably borne by the industry and could engage in cost-effectiveness analysis in determining the [best technology available]."

In addition to her impressive legal background, Judge Sotomayor is on the verge of becoming the first Latino and only the third woman to serve on the Supreme Court. Her story of personal success is an inspiration for young Latinos, women, and for all Americans. She is prepared and ready to serve our Nation on the Court, where I am confident she will continue to build upon the outstanding record she has already achieved as a distinguished jurist. For all these reasons and many more, I will vote to confirm Judge Sotomayor to be the next Associate Justice of the U.S. Supreme Court. I urge my colleagues to join in support of her confirmation.

I ask unanimous consent to have printed in the RECORD the following letters of support: The Lawyers Committee for Civil Rights Under Law, a joint letter with more than 25 disability rights organizations in support of Judge Sotomayor's confirmation; and letters of support signed by more than 80 civil rights and labor organizations in support of her nomination to be the next Supreme Court Justice.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONFIRM JUDGE SONIA SOTOMAYOR TO THE  
U.S. SUPREME COURT  
August 4, 2009

DEAR SENATOR: On behalf of the undersigned organizations, we write to express our support for the confirmation of Judge Sonia Sotomayor as associate justice of the Supreme Court of the United States. In her 17 years of service to date as a federal trial and appellate judge, and throughout the course of her entire career, Judge Sotomayor has strongly distinguished herself through her outstanding intellectual credentials and her deep respect for the rule of law, establishing

herself beyond question as fully qualified and ready to serve on the Supreme Court.

Judge Sotomayor will be an impartial, thoughtful, and highly respected addition to the Supreme Court. Her unique personal background is compelling, and will be both a tremendous asset to her on the Court and a historic inspiration to others. Her legal career further demonstrates her qualifications to serve on our nation's highest court. After graduating from Yale Law School, where she served as an editor of the Yale Law Journal, Judge Sotomayor spent five years as a criminal prosecutor in Manhattan. She then spent eight years as a corporate litigator with the firm of Pavia & Harcourt, where she gained expertise in a wide range of civil law areas such as contracts and intellectual property. In 1992, on the bipartisan recommendation of her home-state senators, President George H.W. Bush appointed her district judge for the Southern District of New York. In recognition of her outstanding record as a trial judge, President Bill Clinton elevated her to the U.S. Court of Appeals in 1998.

During her long tenure on the federal judiciary, Judge Sotomayor has participated in thousands of cases, and has authored approximately 400 opinions at the appellate level. She has demonstrated a thorough understanding of a wide range of highly complicated legal issues, and has a strong reputation for deciding cases based upon the careful application of the law to the facts of cases. Her record and her inspiring personal story indicate that she understands the judiciary's role in protecting the rights of all Americans, in ensuring equal justice, and in respecting our constitutional values—all within the confines of the law. Moreover, her well-reasoned and pragmatic approach to cases will allow litigants to feel, regardless of the outcome, that they were given a fair day in court.

Given her stellar record and her reputation for fairness, Judge Sotomayor has garnered broad support across partisan and ideological lines, earning glowing praise from colleagues in the judiciary, law enforcement community, academia, and legal profession who know her best. Her Second Circuit colleague (and also her former law professor) Judge Guido Calabresi describes her as "a marvelous, powerful, profoundly decent person. Very popular on the court because she listens, convinces and can be convinced—always by good legal argument. She's changed my mind, not an insignificant number of times." Judge Calabresi also discredited concerns about Judge Sotomayor's bench manner, explaining that he compared the substance and tone of her questions with those of his male colleagues and his own questions: "And I must say I found no difference at all." Judge Sotomayor's colleague Judge Roger Miner, speaking of her ideology, argued that "I don't think I'd go as far as to classify her in one camp or another. I think she just deserves the classification of outstanding judge." And New York District Attorney Robert Morgenthau, her first employer out of law school, hailed her for possessing "the wisdom, intelligence, collegiality, and good character needed to fill the position for which she has been nominated."

The undersigned organizations urge you not to be swayed by the efforts of a small number of ideological extremists to tarnish Judge Sotomayor's outstanding reputation as a jurist. These efforts have included blatant mischaracterizations of a handful of her rulings, as well as efforts to smear her as a racist based largely on one line in a speech that critics have taken out of context from the rest of her remarks. The simple fact is that after serving 17 years on the federal judiciary to date, she has not exhibited any

credible evidence whatsoever of having an ideological agenda, and certainly not a racist one. We hope that you will strongly reject the efforts at character assassination that have taken place since her nomination.

In short, Judge Sotomayor has an incredibly compelling personal story and a deep respect for the Constitution and the rule of law. Her long and rich experiences as a prosecutor, litigator, and judge match or even exceed those of any of the justices currently sitting on the Court. Furthermore, she is fair-minded and ethical, and delivers thoughtful rulings in cases that are based upon their merits. For these reasons, the undersigned organizations strongly urge you to vote to confirm Judge Sotomayor. If you have any questions, please feel free to contact Leadership Conference on Civil Rights (LCCR) Counsel Rob Randhava at (202) 466-6058, or LCCR Executive Vice President Nancy Zirkin at (202) 263-2880.

Sincerely,

80 signatures in support of Judge Sotomayor's confirmation.

AMERICAN ASSOCIATION  
OF PEOPLE WITH DISABILITIES,  
Washington, DC, July 7, 2009.

Hon. PATRICK LEAHY,  
*Chair, Judiciary Committee,*  
*U.S. Senate, Washington, DC.*  
Hon. JEFF SESSIONS,  
*Ranking Member, Judiciary Committee,*  
*U.S. Senate, Washington, DC.*

DEAR SENATORS LEAHY AND SESSIONS: On behalf of the undersigned national advocacy organizations representing the interests of millions of people with disabilities, we write to express our strong support for the confirmation of Judge Sonia Sotomayor as Associate Justice of the Supreme Court of the United States. We have reviewed hundreds of Judge Sotomayor's decisions, including her disability rights decisions, from her career as a trial judge and appeals court judge, along with her public statements in speeches and in interviews. Based on her sterling judicial record, and on her valuable life experience, we strongly believe that Judge Sotomayor will adequately and fairly protect the rights of all Americans, including people with disabilities. As such, we ask that you vote to confirm her nomination.

Judge Sotomayor's decisions under our seminal civil rights law, the Americans with Disabilities Act (ADA), have demonstrated a good understanding of—and healthy respect for—the rights of persons with disabilities. In important ADA cases concerning the definition of "disability"—an area of the law subject over the years to many inappropriately narrowing judicial interpretations, so much so that last year Congress amended the ADA to restore its broad reach—Judge Sotomayor has often combed through voluminous or technical testimony to determine whether the plaintiff was protected by the law. Similarly, her understanding of the importance of accommodations to help workers with disabilities maintain employment is reflected in her thoughtful decisions in workplace accommodation cases. She has not been afraid to dissent from a decision finding that plaintiffs did not have disabilities. Nor has she been afraid to overturn a jury verdict where incorrect instructions to the jury impeded a plaintiff's ability to obtain relief under the ADA.

In her ADA decisions, and in other cases, Judge Sotomayor has demonstrated great sensitivity to the needs of, and challenges facing, people with disabilities in this country. For example, her analysis of special education issues arising under the Individuals with Disabilities Education Act (IDEA) reflects—and language from her decisions explicitly states—a keen awareness of the im-

portance of timely special education services to students with disabilities and their families. She has been vigilant in reviewing administrative decisions denying Social Security benefits, especially where applicants are not represented by attorneys. In a notable dissent, Judge Sotomayor argued forcefully that the appointment of a guardian ad litem violated the constitutional rights of a plaintiff who had received psychiatric treatments, because she was not properly notified that she would have no control over her case once the guardian was appointed.

Given her record of balanced and thoughtful decisionmaking, we believe that Judge Sotomayor understands and appreciates Congress's role in enacting important disability rights protections, in enacting the ADA and other disability rights laws, Congress carefully considered the history of people with disabilities in the United States, and acknowledged that many people with disabilities have been ostracized from their families and communities—that they have been prevented from going to school in their neighborhood schools, from working at jobs for which they were qualified, and from participating fully in all aspects of community life. The care that Judge Sotomayor has taken in her disability rights decisions indicates a respect for Congress's intent that these laws have a broad remedial effect on the relationships between individuals with disabilities and covered entities such as employers, schools, state agencies, and public accommodations. For this reason, we expect that she would accord Congress appropriate deference in this area.

It is our belief that Judge Sotomayor will bring her fair, thorough approach to disability rights cases to her work on the Supreme Court. Judge Sotomayor understands the language and purpose of the ADA and other disability rights laws. Further, she understands that the decisions of judges, including Supreme Court justices, that interpret these laws have consequences for people with disabilities. Admirably, she has been unafraid to take strong positions on issues where she believes her reading of the law and facts is correct. Based on her record and her experience—including the fact that she has publicly acknowledged her own insulin-treated diabetes—we strongly urge you to confirm Judge Sotomayor for the Supreme Court.

Thank you for your important work on Judge Sotomayor's nomination. Should you have questions about this letter, please feel free to contact Andrew Imparato of the American Association of People with Disabilities, Jim Ward of ADA Watch/National Coalition for Disability Rights or Jennifer Mathis or Lewis Bossing of the Judge David L. Bazelon Center for Mental Health Law.

Sincerely,

Alexander Graham Bell Association for the Deaf and Hard of Hearing.

American Association for Affirmative Action.

American Association on Health & Disability.

American Association of People with Disabilities.

American Diabetes Association.

ADA Watch/National Coalition for Disability Rights.

Association of Programs for Rural Independent Living.

Autism Society of America.

Burton Blatt Institute.

Disability Rights Education and Defense Fund.

Empowerment for the Arts International.

Epilepsy Foundation.

Higher Education Consortium for Special Education.

Judge David L. Bazelon Center for Mental Health Law.

MindFreedom International.  
 National Association of the Physically Handicapped.  
 National Association of Social Workers.  
 National Association of State Head Injury Administrators.  
 National Center for Environmental Health Strategies, Inc.  
 National Center for Learning Disabilities.  
 National Council on Independent Living.  
 National Disability Institute.  
 National Disability Rights Network.  
 National Down Syndrome Society.  
 National Spinal Cord Injury Association.  
 Teacher Education Division of the Council for Exceptional Children.  
 United Church of Christ Disabilities Ministries Board of Directors.  
 United Spinal Association.

JUNE 30, 2009.

Hon. PATRICK LEAHY, CHAIRMAN,  
*U.S. Senate Judiciary Committee, Washington, DC.*

Hon. JEFF SESSIONS,  
*Ranking Member, U.S. Senate Judiciary Committee, Washington, DC.*

DEAR SENATORS LEAHY AND SESSIONS: As professors of Disability Law, Disability Rights Law, and Special Education Law from across the country, we write to express our support for the confirmation of Judge Sonia Sotomayor for appointment to the United States Supreme Court.

A review of Judge Sotomayor's record on disability law issues indicates that she has an excellent understanding of the various laws' application to people with disabilities in various contexts, including disability civil rights, employment, special education, Social Security, Medicaid, and guardianship.

Judge Sotomayor's record shows that she takes a balanced, thoughtful approach to disability issues. Her analysis is consistently thorough, practical and respectful of individual rights. In close cases, she does not appear to follow any particular ideology or activist agenda.

#### DEFINITION OF DISABILITY

With the passage of the Americans with Disabilities Amendments Act of 2008, Congress repudiated much of the way that the Supreme Court has interpreted the Americans with Disabilities Act's definition of disability. Notwithstanding this flux in the law, Judge Sotomayor's opinions in this area stand out as being careful and reasoned, as she has engaged in searching inquiries into the nature of plaintiffs' impairments to determine whether they meet the functional and legal definition of disability. (See *Bartlett v. New York State Board of Law Examiners*, 2001 WI 930792 (S.D.N.Y. 2001).

Judge Sotomayor has not been reluctant to dissent in cases where the law was being applied overly narrowly, particularly on the issue of coverage based on an employer's perceptions of disability ("regarded as"). (See *EEOC v. J.B. Hunt Transp., Inc.*, 321 F.3d 69, 78 (2d Cir. 2003) (Sotomayor dissenting)). After the passage of the ADA Amendments Act, Judge Sotomayor's interpretation of the "regarded as" prong of disability now has been adopted as consistent with congressional intent.

#### DISCRIMINATION

Judge Sotomayor has authored decisions holding, as a matter of first impression in the Second Circuit, that "mixed motive" analysis (allowing discrimination claims where there are both discriminatory and non-discriminatory motives for a challenged action) applies in ADA employment discrimination claims (See *Parker v. Columbia Pictures Industries*, 204 F.3d 326 (2d Cir. 2000)). Her opinion fully analyzed, and was consistent with, precedents in other jurisdic-

tions and the demonstrated intent of Congress.

#### REASONABLE ACCOMMODATION

Judge Sotomayor has participated in several cases reversing grants of summary judgment for ADA defendants where there were questions of fact regarding whether plaintiffs requested accommodations were reasonable. Judge Sotomayor wrote a decision reversing a jury verdict against the plaintiff for failure to give a jury instruction indicating that, in determining whether reassignment to a vacant position is a reasonable accommodation, an offer of an inferior position is not reasonable when a comparable, or lateral, position is available. (See *Norville v. Staten Is. Univ. Hosp.*, 196 F.3d 89 (2d Cir. 1999)).

#### EDUCATION

Judge Sotomayor's education opinions reflect an appropriate concern for parents' procedural rights, recognizing that, only by ensuring parents' rights to hearings and records can their children's substantive educational rights be ensured, while also balancing states' rights under the "cooperative federalism" envisioned by the Individuals with Disabilities Education Act (IDEA). (See *Taylor v. Vermont Dep't of Educ.*, 313 F.3d 768 (2d Cir. 2002)). She has also written opinions recognizing that the IDEA exhaustion requirement is not so inflexible as to require parents to engage in futile efforts. (See *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195 (2d Cir. 2002)).

#### CONSTITUTIONALITY OF FEDERAL CIVIL RIGHTS LEGISLATION

Judge Sotomayor has resisted judicial attempts to artificially limit federal legislative authority to articulate and enforce individual rights. While demonstrating respect for precedent, she has not interpreted the Constitution to prevent Congress from recognizing individual and civil rights. (See *Hayden v. Pataki*, 449 F.3d 305 (2d Cir. 2006) (Sotomayor joining dissent from en banc decision); *Connecticut v. Cahill*, 217 F.3d 93 (2d Cir. 2000) (Sotomayor dissenting)). Her opinions reflect a deference to Congress and to the plain language of the Constitution.

The Supreme Court is the guardian of our rights and freedoms. As such, we recognize the importance of each nomination to the Court. Based on her record as a district court judge and as a Judge on the Second Circuit Court of Appeals, we believe Judge Sotomayor has demonstrated appropriate respect for the rule of law and the importance of individual rights. Therefore, we urge you to confirm the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court.

23 signatures in support of Judge Sotomayor's confirmation.

Mr. CARDIN. I yield the floor.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Montana.

Mr. BAUCUS. Mr. President, it is with great honor that I rise to express my support for the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

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

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

We Americans should take a moment to recognize that few other nations in the world possess such a strong emphasis on individual rights and liberties—something we cherish greatly. Too

often we take it for granted. We can, in large part, point to this Nation's independent judiciary as the reason for this emphasis on individual rights and liberties. Sure, they are enshrined in the Constitution, but the independent judiciary, framed in the Constitution, helps make all that possible. Justice Sandra Day O'Connor stated, for example:

The Framers of the Constitution were so clear in the Federalist Papers and elsewhere that they felt an independent judiciary was critical to the success of the nation.

Our Founding Fathers were wise in setting up three separate branches of government, including a strong and independent judiciary. The pinnacle of this system and its independence is the U.S. Supreme Court, the highest Court in the land.

Our Constitution embodies this independence in the separation of powers and checks and balances throughout this great document. This is the case in the structure of appointing our Supreme Court Justices. The Constitution provides of the President, for example, that:

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

Let me repeat, the Constitution says: the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint . . . judges of the Supreme Court."

The Senate's role is of utmost importance in defending the independence of the Supreme Court. The Senate's active advice and consent role in the confirmation of Supreme Court Justices helps to ensure that nominees have the support of a broad political consensus.

Of the many responsibilities the Constitution grants to the Senate, few are more critical than the Senate's role in the confirmation process for Supreme Court Justice nominees.

I take—and I know each of us in the Senate does—this constitutional responsibility very seriously. Throughout my time in the Senate, I have established three criteria I use to examine nominees. These three criteria are: professional competency, personal integrity, and a view of important issues within the mainstream of contemporary judicial thought. Those are the three. They are the criteria I use. I have analyzed past Supreme Court nominees using these three criteria, including Chief Justice Roberts and Justice Alito. I will review my criteria.

First, professional competency. The Supreme Court must not be the testing ground for the development of a jurist's basic values. We do not have time for that. A Justice cannot learn on the job, nor should she require further training. The stakes are simply too high. She must be professionally competent on day one.

Second, personal integrity. Nominees to our Nation's highest Court must be of the highest caliber.

And, third, the nominee should fall within the mainstream of contemporary judicial thought. The next Justice must possess the requisite judicial philosophy to be entrusted with the Court's sweeping constitutional powers.

I believe that in the case of Judge Sonia Sotomayor, the answer to all three questions is a resounding "yes."

Judge Sotomayor is the embodiment of the American dream—rising from a Bronx public housing project to a place among the judicial elite. She attended Princeton, where she graduated among the top of her class, and she was editor of the *Law Journal* at Yale Law School.

Judge Sotomayor's work history is diverse and rich with experience. Judge Sotomayor began her legal career as assistant district attorney for New York County in 1979. She then worked as a litigator at Pavia & Harcourt, a small firm in Manhattan, where she handled commercial cases.

Judge Sotomayor's 17 years on the bench, first as a district court judge, then on the second circuit, have yielded an enormous yet consistent body of work. Her opinions show thorough and thoughtful analysis, an eye for detail, and, in her own words, fidelity to the law.

I have no doubt that Judge Sotomayor has the professional competency that the American people require of Supreme Court Justices.

Judge Sotomayor's life experiences also convey the personal integrity essential to a Supreme Court Justice. She has given back her time, energy, and expertise to the community that helped shape who she is. She has worked hard throughout her career, inspiring students across the country to pursue study of the law.

For her service, Judge Sotomayor has received many honorary degrees—many—countless awards, and accolades from her colleagues, clerks, and the academic community. Judge Sotomayor has also made personal sacrifices. She recognizes the personal sacrifices she must make in order to serve as a Justice on the Supreme Court.

My third criteria—that is, a nominee who falls within the mainstream of contemporary judicial thought—is met, again, by reviewing Judge Sotomayor's lengthy judicial record. Some of my colleagues want to paint her as a judicial activist with leftwing leanings.

In fact, in constitutional cases that came before the second circuit, Judge Sotomayor voted with the majority 98 percent of the time—hardly a leftwing activist. In the rare cases where she held a government action unconstitutional, the decision was so clear that it was unanimous. Judges appointed by Republican Presidents have agreed with Judge Sotomayor 90 percent of the time—hardly a leftwing activist.

This is not the actions of an activist judge. In fact, this is a judge who can be relied on to produce a decision that most people can agree with.

I strongly believe Judge Sotomayor has met the three criteria I view essential to a Supreme Court Justice, and this was even more evident during her confirmation hearing.

Over the 4 days of hearings on the nomination of Judge Sotomayor, what did we see? We saw a composed, intelligent, and thoughtful judge, someone committed to the law, and one with a rich life story and expansive judicial experience, whose perspective will enrich the judgments of the U.S. Supreme Court.

In closing, I congratulate our President. I congratulate President Obama on his historic nomination. I am confident Judge Sotomayor will make an outstanding Justice on the U.S. Supreme Court.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, for the benefit of Members, we will have no more votes tonight. I just completed a meeting with Senator McCONNELL, and we are trying to work through when we are going to have a final vote on the Supreme Court nomination, what we are going to do on travel promotion, and what we are going to do for cash for clunkers. We are trying to work through that. We hope we will have something worked out tonight, but knowing how things work around here, we probably will not be able to get information to Members until tomorrow. But there will be no more votes tonight.

I have indicated the number of things we have to complete before we leave here, and that is all dependent on the amount of cooperation we get from the minority whether we finish tomorrow, Friday, or Saturday, or Sunday. There is no reason we can't put in a modestly long day tomorrow and complete everything, but we will have to see. We will do our best to try to get notice to Members as quickly as we can.

Mr. INOUE. Mr. President. I support the nomination of Judge Sonia Sotomayor to the Supreme Court.

Some of my colleagues have criticized Judge Sotomayor for her views. I welcome an independent thinker.

Some have criticized her for being a "liberal" in certain cases. What is wrong with being a liberal? Do all Supreme Court Justices have to qualify as being conservatives?

I welcome the nomination of Judge Sotomayor to the Court because she, unlike most members of the Supreme Court, has lived through the experiences of many of our citizens. She knows what it is to be poor. She knows what it is to have grown up in public housing.

I wish her the very best.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise today in support of the confirmation of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court. She has received support from many parts of the community. The Judiciary Committee has received many letters of support for Judge Sotomayor's nomination, from current and former public officials, including the National Association of Latino Elected and Appointed Officials, the Congressional Asian Pacific American Caucus, former President Bill Clinton, as well as former Judge Advocates General. These letters of support continue to come.

Judge Sotomayor is well qualified, with significant judicial experience. After graduating from Yale Law School, she worked in the New York County District Attorney's Office prosecuting criminal cases such as homicides and robberies, child pornography, police misconduct, and fraud cases. She then spent over 7 years in private practice working with large corporations on international business issues.

In 1992, Judge Sotomayor was appointed by President George H.W. Bush to the Southern District Court of New York. Six years later she was appointed by President Clinton to the Second Circuit Court of Appeals where she has served for more than 10 years.

Throughout her career, Judge Sotomayor has displayed a keen intellect and an understanding of the world around her. She knows the law and knows firsthand how it affects Americans' daily lives.

If confirmed, Judge Sotomayor will be the first Hispanic Justice and the third female Justice to sit on the Supreme Court. Her confirmation would make the Supreme Court more reflective of our great and diverse Nation.

She brings a rich background and a wealth of experience and understanding of American life that will have an impact on the cases before the Court. As other Justices have noted, the unique personal story of each Supreme Court Justice allows them to better understand the parties before them and to better apply the law to the facts at hand. She has a deep understanding of the real lives of Americans—how her decisions can affect not only the parties before her but society at large.

In June, I had the pleasure to meet with Judge Sotomayor. During our meeting we talked about Hawaii, its history, and its culture. We talked about how being an island State forces us to work together to resolve challenges and how our diverse culture helps us find unique solutions. Judge Sotomayor understands that. She knows our diversity ultimately makes America stronger.

Her commonsense approach to the law gives Americans reason to believe that she will be an unbiased and fair-minded Supreme Court Justice. In fact,



Judge Sotomayor's record demonstrates her realistic approach to deciding cases and her fair treatment of the parties before her. She has a long record of judicial restraint and respect for our constitutional freedoms, established precedent, and the other branches of the government, including the lawmaking role of Congress.

Last month we watched as she handled her confirmation hearing with poise and composure. She addressed the committee members' questions with thoughtfulness and respect. She demonstrated that she is up to the challenge and the great responsibility of serving on the Supreme Court. I am confident, based on her experience and background, that she will make an excellent addition to the U.S. Supreme Court.

I urge my colleagues to focus on her qualifications, her life experience, and her judgment and join me in supporting Judge Sotomayor's confirmation.

Mr. President, I ask unanimous consent that the letters I mentioned at the beginning of my remarks be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF LATINO  
ELECTED AND APPOINTED OFFICIALS,  
*Los Angeles, CA, July 10, 2009.*

Hon. PATRICK J. LEAHY,  
*Chairman, Senate Committee on the Judiciary,*  
*Washington, DC.*

Hon. JESS SESSIONS,  
*Ranking Member, Senate Committee on the Judiciary,*  
*Washington, DC.*

DEAR SENATOR LEAHY AND SENATOR SESSIONS: On behalf of the National Association of Latino Elected and Appointed Officials (NALEO), I am writing to express our strong support for the swift confirmation of Judge Sonia Sotomayor to serve as Associate Justice of the U.S. Supreme Court. NALEO is the leadership organization of the nation's more than 6,000 Latino elected and appointed officials.

Judge Sotomayor is an exceptionally accomplished jurist who has demonstrated a deep commitment to equal justice for all Americans. She has excelled as a prosecutor, a corporate litigator, a federal judge, and an appellate judge on the Second Circuit Court of Appeals. Judge Sotomayor has more experience in the federal judiciary than any other person nominated to the United States Supreme Court in a hundred years.

In addition, during her distinguished career, Judge Sotomayor has combined a profound respect for the rule of law with careful and thoughtful analysis of the law's impact on the day-to-day realities of our diverse nation. Through her extensive public service efforts, she has promoted equal opportunity in employment and housing, and expanded access to the electoral process.

NALEO's Board reached the decision to support Judge Sotomayor's nomination after a thorough review of her qualifications conducted in accordance with the Board's principles governing the assessment of federal judiciary nominees. This assessment involved a comprehensive evaluation of the

Judge's professional accomplishments, and her opinions and rulings that affect equal access to civic and economic opportunities. The Board also reviewed the Judge's record of service to the legal profession, the judiciary, and the public.

We believe that the confirmation of Judge Sotomayor is particularly important, because it will help enhance the diversity of the nation's highest court, where no Latino has yet served. In order for our judicial system to carry out justice effectively and interpret our laws fairly, our judges must understand how laws affect the daily realities of the life of our nation's diverse residents. Latinos are the nation's second largest and fastest growing population group, and Judge Sotomayor will bring a deep understanding of the issues facing Latinos and all Americans to the Supreme Court. Thus, her service as an Associate Justice will greatly enrich the administration of justice in our nation.

NALEO believes Judge Sotomayor will be an invaluable asset to our nation's highest court because she possesses exceptional judicial expertise and a firm dedication to our laws and Constitution. The full Senate must confirm the Judge's nomination by the August Congressional recess in order for Judge Sotomayor to participate in September when the Court confers, and to be seated on the first Monday in October, when the court publicly convenes. We urge the Senate Judiciary Committee to help meet this schedule by advancing Judge Sotomayor's nomination to the full Senate as expeditiously as possible.

Thank you for attention to this matter. Should you have any questions, please contact me.

Sincerely,

ARTURO VARGAS,  
*Executive Director.*

CONGRESSIONAL

ASIAN PACIFIC AMERICAN CAUCUS,  
*Washington, DC, July 13, 2009.*

Hon. PATRICK J. LEAHY,  
*Chairman, Committee on the Judiciary, U.S. Senate,*  
*Washington, DC.*

Hon. JEFF SESSIONS,  
*Ranking Member, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: On behalf of the Congressional Asian Pacific American Caucus (CAPAC), I am writing to inform you of CAPAC's endorsement of the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

CAPAC applauds President Obama's decision to choose Judge Sonia Sotomayor as his Supreme Court nominee. A brilliant legal mind, Judge Sotomayor has already served our country with great distinction. Over the course of her distinguished career, Judge Sotomayor has been a fearless guardian of the rule of law and demonstrated integrity of the highest class, earning her the respect of the legal community.

Despite humble beginnings from the South Bronx, Judge Sotomayor went on to become the valedictorian of her high school, the top undergraduate student in her class at Princeton, and an editor of the Yale Law Journal. Her legal career has been as dazzling as her life story, and she is unquestionably qualified to serve as a Supreme Court Justice.

She would bring to the Supreme Court her experience in nearly every level of our judicial system as a prosecutor, litigator, trial court and appellate judge—offering a depth

and breadth of experience that will inform her work on our nation's highest court. In fact, she has a wider range of federal legal experience than any Justice sitting on today's Court.

CAPAC extends its endorsement with pride. Members of our caucus look forward to working with you to ensure a fair and smooth confirmation process.

Sincerely,

MICHAEL M. HONDA,  
*Chair.*

JULY 14, 2009.

Hon. PATRICK J. LEAHY,  
*Chairman, U.S. Senate Judiciary Committee,*  
*Washington, DC.*

DEAR MR. CHAIRMAN: I write respectfully to urge the Senate's speedy confirmation of the Honorable Sonia Sotomayor as Associate Justice of the Supreme Court of the United States.

I had the privilege to name Judge Sotomayor to a position in the Federal Judiciary. On that occasion, she was a trailblazer as the first Latina nominated to a U.S. Circuit Court. As the first Hispanic nominee to the U.S. Supreme Court, Judge Sotomayor once again breaks new ground. If confirmed, Justice Sotomayor will be the second jurist in history nominated to three judgeships by three different Presidents. I am very proud of our nation at this auspicious moment.

It is my hope that Judge Sotomayor will join the Supreme Court, where she can make a unique contribution through her experience as a state prosecutor and a trial judge. Her compelling life story, being raised by a single mother of modest means who instilled in her the values of hard work and educational achievement, is the true embodiment of the American Dream.

I congratulate President Obama for selecting an eminently qualified nominee and encourage the Senate to recognize Judge Sotomayor's outstanding qualifications and experiences, which make her worthy of the honored role of Associate Justice of the Supreme Court of the United States.

Sincerely,

BILL CLINTON.

Hon. PATRICK J. LEAHY,  
*Chairman, U.S. Senate Committee on the Judiciary,*  
*Washington, DC.*

Hon. JEFFERSON B. SESSIONS,  
*Ranking Member, U.S. Senate Committee on the Judiciary,*  
*Washington, DC.*

Hon. LINDSEY GRAHAM,  
*Member, U.S. Senate Committee on the Judiciary,*  
*Washington, DC.*

DEAR CHAIRMAN LEAHY, RANKING MEMBER SESSIONS, AND SENATOR GRAHAM: We, former Judge Advocates General and a general in the Judge Advocate General's Corps, respectfully write to support the confirmation of Judge Sonia Sotomayor as an Associate Justice of the United States Supreme Court.

Judge Sotomayor is well-qualified for the Supreme Court and should be confirmed. She has earned a reputation for careful, narrowly-tailored decisions in seventeen years as a federal judge, applying the law impartially, and faithfully honoring precedent and the rule of law. Earlier in her career, she impressed her colleagues as a focused and hard-working prosecutor and corporate litigator. She has distinguished herself in each role, displaying rigorous thinking and careful attention to the facts before her. Judge Sotomayor would serve the Court, and the nation, well.

We urge your speedy confirmation of this qualified nominee.

Sincerely,

JAMES P. CULLEN,  
*Brigadier General,*  
*USA (Ret.).*

DONALD J. GUTER,  
*Rear Admiral, USN*  
*(Ret.).*

JOHN D. HUTSON,  
*Rear Admiral, USN*  
*(Ret.).*

Mr. AKAKA. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MERKLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MERKLEY. Mr. President, over the past few weeks of meetings and hearings, both the Senate and the American people have witnessed the intelligence, the legal understanding, and dedication to the law that makes Judge Sonia Sotomayor well qualified to be our next Supreme Court Justice. Today, I rise to support her nomination and share a few thoughts on why I think Judge Sotomayor should be confirmed as the next U.S. Supreme Court Justice.

When I was in college I took a freshman seminar on the Bill of Rights. Each week, our professor would give us the facts of a Supreme Court case without the opinions and would ask us to draft our opinion of a situation. After we had prepared our opinion, we would share them the next week, and then and only then read the official majority and minority opinions of the Justices. It was quite an education in the Bill of Rights.

Over the course of the semester, many of us came to identify with the approach and viewpoints of one Justice or another. It was very helpful in gaining insight into my own thinking and that of our Supreme Court. So when I met Judge Sotomayor, I posed a question to her: Which judge do you most identify with? Her answer was Justice Benjamin Cardozo.

Let me tell my colleagues a little bit about Benjamin Cardozo. A native of New York, he served on the New York Court of Appeals, the highest State court in New York, from 1914 to 1932, and then on the U.S. Supreme Court from 1932 to 1938. Cardozo was descended from Portuguese Jewish immigrants who long ago had fled the Spanish Inquisition, and Cardozo was the first Jewish person to serve on the New York Court of Appeals. His careful, brilliant opinions on New York law earned him wide recognition as one of our Nation's most outstanding judges.

When he was nominated to the Supreme Court in 1932, he was confirmed by the Senate by a unanimous voice vote. I can see many reasons why Judge Sotomayor, as a native New

Yorker, as a child of Spanish-speaking immigrants from Puerto Rico, and as a longtime judge in New York might identify with Justice Cardozo. I am sure Judge Sotomayor would love to extend the parallel to Cardozo's unanimous Senate confirmation vote. But Judge Sotomayor cited none of these reasons. Rather, she pointed to his particular approach to judging—the careful, fact-intensive approach that was Cardozo's hallmark.

Let me put that observation in context. Cardozo served as a judge during the industrializing early 20th century. Because of the rapidly changing times in which he lived, he was faced with a wide range of cases that raised new and difficult issues. His opinions became recognized for drawing deeply on the facts of individual cases and relied heavily on the development of the law that came before him. He was innovating and forward-looking but also deeply respectful of careful development of the law. He described his style as one of steady, hard work. Justice Cardozo and Judge Sotomayor share a love for steady, hard work—the steady, careful development of law that comes from fact-intensive, careful judging. These are approaches to law that will serve the judge well as our next Supreme Court Justice.

Interpreting the Constitution is, of course, a challenge. Our Constitution is mostly written in broad, general directives. For example, our first amendment says Congress shall pass no law "abridging the freedom of speech." Our fourth amendment ensures persons shall be free in their homes from "unreasonable searches and seizures." The fourteenth amendment declares that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

Those broad phrases do not provide easy answers to complicated cases. When is a search or seizure unreasonable? When does a practice or law abridge freedom of speech? When does a practice or law abridge equal protection under the law?

Our first Chief Justice, John Marshall, correctly noted it is the responsibility of the judicial branch to provide answers. How should a Supreme Court Justice go about providing these answers?

Judge Sotomayor's background and record offer a model for how it should be done. First, she brings to her work extraordinary academic and experiential qualifications. She graduated at the top of her class from Princeton University and from Yale Law School. She brings valuable life experience from growing up in public housing in the Bronx, from serving as a prosecutor in New York City, and from working as an attorney in private practice. In 1992, she was appointed to the Federal bench by President George Herbert Walker Bush. During the following 17 years, including 11 on the U.S. Court of Appeals for the Second Circuit, she weighed in on over 3,000 panel decisions and authored about 400 published opinions.

What this body of work shows, more than anything else, is that Judge Sotomayor is diligent and prudent in her approach to hearing and deciding cases. She thoroughly weighs the facts and carefully adapts the principles expounded by previous courts to reach a just result in each new set of circumstances. In fact, the reason many find it difficult to pin a label on her—be it conservative or liberal—is because her decisions do not follow ideological lines. Rather, they emerge from close readings of previous cases and careful thought about the implications of the particular facts. Clearly, the judge's respect for Justice Cardozo isn't just an off-the-cuff remark. Hers is record a judicial record that Benjamin Cardozo would be proud of.

Just as Cardozo faced the challenge of interpreting the Constitution in a newly industrialized state, so, too, do we face the challenge of interpreting the Constitution in a high-tech, globally interconnected world. The answers to tomorrow's constitutional questions will not be easy. But if we follow Judge Sotomayor's approach, our constitutional interpretations will be built on the wise interpretations of the past. We will, with this approach, have confidence that our Supreme Court will stay true to the body of principles of justice and freedom that are at the heart of our constitutional tradition.

Let me summarize. Judge Sotomayor has a stellar academic background. She brings diverse and valuable life experiences. She has a distinguished record on the bench, and she will bring a carefully measured judicial approach and valuable insights to our Supreme Court.

Moreover, the value of the diversity that Sotomayor would bring to the Court, as a woman, as an American of Puerto Rican descent, cannot be overstated. We often talk about government by and for the people. That is a cherished part of our tradition. We often talk about it in terms of the diversity of those who serve in the executive branch. We often talk about it being important in the diversity of those who serve in the legislature, so we can bring valuable insights to bear. But government by and for the people extends to the judicial branch as well. We need to have the insights that flow from having judges with many different life experiences.

I am confident Sonia Sotomayor will be a wise guardian of our Constitution. Therefore, I urge my colleagues to join me in casting their votes to confirm Judge Sonia Sotomayor as an Associate Justice of the U.S. Supreme Court.

I yield the floor.

Mr. FEINGOLD. Mr. President, I want to say a few words about Judge Sotomayor and about the hearing process we have just been through.

First, I commend Chairman LEAHY and his staff for a remarkably well-run proceeding in the Judiciary Committee. I think anyone who saw the 4 days of hearings would agree that the

process was scrupulously fair. Everyone got a chance to ask all the questions they wanted to ask. They had the time they needed for follow up questions, and for follow ups to those follow ups. No stone was left unturned, even if the answers the Judge gave weren't always what the questioner hoped to hear.

What the public doesn't see is the work that is done behind the scenes to get us to that point. Not just the setup of the room and all the complex preparations that go into the smooth running of the hearing itself, but also the enormous effort to make all of the background information that came to the Judiciary Committee available online virtually immediately—all of Judge Sotomayor's speeches and articles, over 100 letters and reports from people who know her, or organizations that wished to express their views on her nomination, as well as all of the materials received from the PRLDEF organization in response to the Judiciary Committee's request. Chairman LEAHY has set a new standard for transparency and public access to Supreme Court nomination proceedings, and I truly commend him for that, and I also thank him and his staff for the tremendous work they have done over the last several weeks.

The scrutiny to be applied to a President's nominee to the Supreme Court is the highest of any nomination. The Supreme Court, alone among our courts, has the power to revisit and reverse its precedents, and so I believe that anyone who sits on that Court must not have a pre-set agenda to reverse precedents with which he or she disagrees, and must recognize and appreciate the awesome power and responsibility of the Court to do justice when other branches of government infringe on or ignore the freedoms and rights of our citizens. This is the same standard I applied to the nominations of both Chief Justice Roberts and Justice Alito during the last administration.

What we saw over 4 days of hearings on the nomination of Judge Sotomayor was a thoughtful, intelligent, and careful judge, a person committed to her craft and to the law, someone whose remarkable life story and varied experience will add diversity and perspective, which the Court sorely needs. Not only will Judge Sotomayor become the first Latina Justice, and only the third woman, to serve on the Court, but she will be the only Justice who has served as a trial court judge, and she will have more judicial experience at the outset of her service on the Court than any of her colleagues did. There is no doubt she is highly qualified, and I think we saw during those 4 days of hearings that she has an admirable judicial temperament and demeanor that will serve her well on the Court.

Judge Sotomayor's record and testimony satisfied me that she understands the important role of the Court in protecting civil liberties, even in a

time of war. She sat on a Second Circuit panel that struck down portions of the National Security Letter statute that was so dramatically expanded by the Patriot Act. And when I asked her how September 11 changed her view of the law, she gave the following answer:

The Constitution is a timeless document. It was intended to guide us through decades, generation after generation, to everything that would develop in our country. It has protected us as a nation. It has inspired our survival. That doesn't change.

Later, when we discussed the Korematsu case, she said:

A judge should never rule from fear. A judge should rule from law and the Constitution.

Those words give me hope that she will have the courage to defend the liberties of the American people from an overreaching executive or legislative branch.

At the same time, she appreciates the deference the judiciary must give to the legislature as it seeks to solve the problems facing the American people. I don't see in her record or in her public statements a burning desire to overturn precedent or to remake constitutional law in the image of her own personal preference, and I certainly don't see bias of any kind. I was also impressed with her record and statements during the hearing on judicial ethics. Judge Sotomayor seems to understand that the extraordinary power she will wield as a Justice must be accompanied by extraordinary care to guard against any apparent conflict of interest.

All that being said, I do want to express a note of dissatisfaction. Not with Chairman LEAHY, or with my colleagues on the Judiciary Committee, and certainly not with Judge Sotomayor, but with a nominations process that I think fails to educate the Senate or the public about the views of potential Justices on the Supreme Court. I have said before that I do not understand why the only person who cannot express an opinion on virtually anything the Supreme Court has done in recent years is the person from whom the American public most needs to hear. It makes no sense to me that the current Justices can hear future cases notwithstanding the fact that we know their views on a legal issue because they wrote or joined an opinion in a previous case that raised a similar issue, but nominees for the Court can refuse to tell us what they think about that previous case under the theory that doing so would compromise their independence or their ability to keep an open mind in a future case.

I remain unconvinced that the dodge that all nominees now use—"I can't answer that question because the issue might come before me on the Court"—is justified. Nomination hearings have become little more than theater, where Senators try to ask clever questions and nominees try to come up with cleverer ways to respond without answering. This problem certainly did not

start with these hearings or this nominee, but perhaps it is inevitable. The chances of the Senate rejecting a nominee who adopts this strategy are very remote, based on the recent history of nominations. Nonetheless, I do not think it makes for meaningful advice and consent.

So I cannot say that I learned everything about Judge Sonia Sotomayor that I would have liked to learn. But what I did learn makes me believe that she will serve with distinction on the Court, and that I should vote in favor of her confirmation.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, it is a privilege to rise to speak on behalf of President Obama's nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

This takes me back to a time, shortly after I was privileged to be elected to the Senate, when President George H.W. Bush nominated David Souter to be an Associate Justice of the Supreme Court of the United States. David Souter had, by that time, been in law enforcement as an attorney general of New Hampshire. As a former attorney general, I felt an instant kinship with him. He had also been a trial judge in New Hampshire, a member of the New Hampshire Supreme Court and, ultimately, he sat on the Federal First Circuit Court of Appeals. He was proposed to President Bush 41 by our former colleague, Warren Rudman, a Senator from New Hampshire, a great Senator and a great friend.

I remember when Senator Rudman brought David Souter around and introduced him after President Bush nominated him. It has been my privilege to have had a friendship with David Souter in the company of former attorneys general, particularly those who gather periodically to speak of matters past, present, and future. I wanted to speak of Justice Souter because, of course, it is his announcement of retirement that opens the vacancy that President Obama has asked us to fill with Judge Sonia Sotomayor.

In the case of now-Justice Souter, I was privileged in one of my early votes here to join 89 of my Senate colleagues in voting to confirm Justice Souter. With his retirement this summer, after two decades on the Court, he has become the first Justice to retire of the six Supreme Court Justices on whose nominations I have had the privilege and responsibility of voting.

I wish to first thank and commend Justice Souter for his decades of public service, generally, and, specifically, for his thoughtful, distinguished service to the highest Court of our land. I know Justice Souter is a very honorable, straightforward man. He is—if I may say so as a New Englander—a quintessential New Englander. He carries with him all the great constitutional traditions of the part of our country from which I am proud to hail. He

brings with him some characteristics that are best associated with a New Englander. He is straightforward. He is not one for flowery rhetoric. He is one who is committed to integrity in his personal life, as well as his public life. He has a great New England sense of humor—probably not often seen in his decisions, but I hear personal testimony here, though I am not under oath at the moment, to that great quality he has.

I know there are some who have become critics of Justice Souter, who have said he isn't what they thought he would be when he was nominated. But when he was nominated, what he presented himself as was a man of the law who believed in our Constitution, believed in the values that underlie it, and one who would always do what he thought was right. He has done that in his years on the U.S. Supreme Court. I haven't agreed with every opinion Justice Souter has ever written, but this I know: Every time he sat to write an opinion or to join an opinion, he did so after the most careful consideration. He is an extraordinarily hard-working, disciplined individual and, ultimately, he reached a judgment that he felt was right, according to the requirements of our Constitution. I salute this great American, this quiet American, but this profoundly patriotic American, and wish him well in the years he has ahead of him as he returns now, by his own choice, to his beloved New Hampshire.

The life tenure of Supreme Court Justices—a lifetime appointment for those who choose not to step down—defines, in many ways, the importance of the Senate's role in providing advice and consent to the President on Supreme Court nominees. I have always felt, from the time I first came in—and the first vote I cast was on a controversial nomination for Secretary of Defense. It was in 1989. I spent a lot of time looking back at the history of the advice and consent clause. To make a long story short, I felt it wasn't for me to vote for a nominee of the President, to advise and consent. I did not have to feel that nominee was the person I would have chosen but just that that nominee was within the range of being acceptable and was prepared and qualified for that job. There is a slightly higher standard for Supreme Court nominees because they do serve lifetime appointments.

It is with that in mind that I approach this nomination of Sonia Sotomayor. I have met with Judge Sotomayor and have reviewed her judicial record. I followed her confirmation hearing before the Judiciary Committee and, based on all that, I conclude, without question, that she possesses remarkable intellectual and legal credentials, has a distinguished record of experience in the public and private sector, and a deep commitment to our country and our Constitution. I will, therefore, vote affirmatively to consent to her nomination to the Supreme Court.

Judge Sotomayor's 17-year record as a Federal judge speaks volumes about her qualifications to serve on the Court, and that is why I feel she more than passes the threshold for this lifetime appointment. During 6 years as a trial judge on the U.S. district court and 11 years as a judge on the court of appeals, Sonia Sotomayor has shown she possesses a superior intellect, a commendable judicial temperament, and an admirable respect for the role of established precedent in our legal system.

It is usually and quite naturally true that those who know people best are those with whom they have worked most closely. Those who have worked most closely with Judge Sotomayor are consistent, even effusive, in their praise for her personal attributes, her professional qualifications, and her fairness. Chief Judge Dennis Jacobs of the Second Circuit Court of Appeals, said:

Sonia Sotomayor is a well-loved colleague on our court—everybody from every point of view knows that she is fair and decent in all her dealings.

Another colleague on the Second Circuit, Senior Judge Roger Miner, said:

I don't think I'd go so far as to classify her in one camp or another. I think she just deserves the classification of outstanding judge.

While the most significant facts about Judge Sotomayor are her personal qualifications and her judicial record, I also note that women are underrepresented on the Supreme Court of the United States. I say that not just as a matter of numbers but as a matter of qualification.

I thank the President for this historic nomination of the first American of Hispanic descent to the Supreme Court. This nomination was clearly made on the basis of merit, not ethnicity or gender. I think it is consistent with her merit. But acknowledging her ethnicity, her selection represents another barrier that has been broken in American life. When that happens in American life, the doors open wider for every other American.

I will be proud to vote yes to confirm Sonia Sotomayor, of New York, to be Associate Justice of the U.S. Supreme Court.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. WARNER). The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Republican time for the next hour be allocated as follows: Senator ENSIGN, 30 minutes; Senator MURKOWSKI, 20 minutes; and Senator SESSIONS, 10 minutes.

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

Mr. ENSIGN. Mr. President, I rise to speak about Supreme Court nominee, Judge Sonia Sotomayor.

The words "Equal Justice Under Law" are engraved in the stone above the entrance to the U.S. Supreme Court. This simple phrase, "Equal Jus-

tice Under Law," carries an immense amount of weight and responsibility.

As a Senator tasked with the monumental responsibility of confirming a Supreme Court nominee, it is with these four words in mind that I carefully studied this Supreme Court nominee. There is no denying that Judge Sotomayor is impressive. Her qualifications, diverse experience, and personal disposition make her a worthy candidate for this nomination. The fact that this is a proud moment for our Nation has not been lost on me. This year, America has certainly filled the history books. On the tails of his historic election, President Obama has chosen to nominate the Nation's first Hispanic woman to the Supreme Court. President Obama and Judge Sotomayor have made history, but the impact they will have on future generations is so much greater.

Although, as a child, Judge Sotomayor could do little more than dream. She was born in the Bronx, raised by a single mother after her father passed away when she was 9 years of age. Her mother instilled in her a deep value for education and a strong work ethic, which paid off with a full scholarship to Princeton University. She graduated summa cum laude from Princeton and went on to attend Yale Law School, where she earned her juris doctorate. She is truly an inspiration for people across our great country.

Judge Sotomayor's humble upbringing is reminiscent of another recent judicial nominee, also of Hispanic heritage, who rose above his meager means in New York to attend and graduate with honors from Ivy League schools. And the similarities do not stop there. I am referring to the American success story of Miguel Estrada, an individual equally deserving of our respect.

Miguel Estrada came to America as a Honduran immigrant at the age of 17. With very little English in his vocabulary, he rose to the top of the legal profession after graduating with honors from Columbia University and Harvard Law School. He clerked for Supreme Court Justice Anthony Kennedy and was a former Assistant Solicitor General of the United States. Miguel Estrada served in the administrations of both President Bill Clinton and President George W. Bush.

In 2001, President George W. Bush recognized his talent and nominated him to the U.S. Court of Appeals for the DC Circuit. Unfortunately, partisan politics came into play, and Estrada's record was not judged purely on its merits. He did not receive the fair consideration that has been given to Judge Sotomayor. He never even made it as far as a confirmation vote. Miguel Estrada's nomination and expected ascension to the Supreme Court was cut short by a Democrat filibuster—as a matter of fact, seven Democrat filibusters that helped create a new standard for judicial nominees and the Senate's constitutional role of "advise and consent." Had he been given

the fair consideration he deserved, the Hispanic community would have another great role model in our judicial system.

As I have previously stated, I am impressed by Judge Sotomayor. In our meeting, I found her very personable and easy to talk with. Unfortunately, our discussions during that meeting did little to alleviate the concerns I had upon reviewing her record and her public statements, including her testimony before the Judiciary Committee. Judge Sotomayor's record and testimony have left me with more uncertainty and doubt instead of the assurance that she has the ability to rule with a fair and impartial adherence to the rule of law. I fear that Judge Sotomayor, when seated on the Supreme Court bench, will not be a zealous advocate for "Equal Justice Under Law." Many of her responses to me and to my colleagues on the Judiciary Committee were troubling, not necessarily because of substance, but more due to the lack of it.

I remain concerned that we just do not know who we will be getting on the Supreme Court. The inconsistencies in Judge Sotomayor's testimony, judicial record, and writings make it impossible to fully understand her commitment to how she will interpret and uphold the Constitution.

This especially concerns me because a lifetime appointment to the Supreme Court comes without the barriers of additional judicial review that someone has in a lower court. The restraints of precedent that she was under as a district court and circuit court judge will not apply.

Even if I was to solely consider her judicial record, I cannot in good conscience dismiss her cursory treatment of cases dealing with serious and important constitutional questions. Some of her decisions have run contrary to the Constitution, were decided in opinions lacking analysis, and are consistent with liberal political thought.

For example, there was her 2006 private property decision that permitted the government to take property from one developer and give it to another.

And we have heard a lot about her 2008 Ricci decision, recently overturned by the U.S. Supreme Court, which would have effectively allowed employers to engage in reverse discrimination, so long as their claims of their actions were motivated by a desire to avoid conflicts with favored minority groups. A majority of Justices found that Judge Sotomayor misapplied the law.

Then there was her 2009 second amendment decision in *Maloney v. Cuomo* that would give States the power to ban firearms. The unsigned decision, joined by Judge Sotomayor, held that New York's state statute does not interfere with a fundamental right. The opinion also dismissed the argument that a complete ban violates the Second Amendment by citing Supreme Court cases from the 19th century holding that the Second Amend-

ment applies only to the Federal Government and not to the States. To me, the Maloney ruling is an indication that Judge Sotomayor does not view the Second Amendment as protecting a fundamental right.

This is further supported by a 2004 decision in *U.S. v. Sanchez-Villar* in which she also joined a decision that flatly denied gun possession as a fundamental right. While that decision predated *Heller*, the Maloney decision occurred more than six months after the *Heller* decision, and yet Sotomayor again dismissed the possibility that the second amendment protects a "fundamental right." Once again in the decision, no analysis was given as to why. Her conclusion was that, one, the Second Amendment does not apply to the States and, two, the Second Amendment does not protect a fundamental right.

Had Judge Sotomayor looked to the history of the Fourteenth Amendment, the Civil Rights Act, and the Freedman Bureau's Act, she would have recognized—or at least she should have recognized—that they were enacted to ensure that the constitutional rights of freedmen were protected against State infringement. This is especially true as it relates to the Second Amendment and the practice by States and localities that were outlawing the ownership of firearms by newly freed slaves.

Given this information, coupled with Judge Sotomayor's record, I believe it is reasonable to conclude that she has a bias against firearms and our constitutional right to "keep and bear arms." Should we expect her to rule differently when the Supreme Court takes up the Maloney case or the Ninth or Seventh Circuit cases that deal with the question of whether the Second Amendment applies to the States?

Judge Sotomayor appears to believe that the Second Amendment is not an individual, fundamental right. It is, in fact, a fundamental right granted to all Americans and enshrined in our Constitution. The Second Amendment is the cornerstone of our Bill of Rights. If it is chipped away or infringed upon in any way, our freedom and liberties will be compromised. It is my fear that Judge Sotomayor will threaten Second Amendment rights for all Americans.

This was not the first time her bias and propensity to rule with purpose-driven results impacted her judicial decision making. Unfortunately, Judge Sotomayor's record and testimony provides more uncertainty and doubt than a declaration to her ability to rule with a fair and impartial adherence to the rule of law.

Presidents, Senators, judges, and Supreme Court Justices alike take an oath to preserve, to protect, and to defend the Constitution. It is our most solemn duty. Judges are expected to be tethered to the Constitution and impartially apply the law to the facts. The American people overwhelmingly reject the notion that unelected judges should set policy or allow their social,

moral, or political views to influence the outcome of cases. I worry about her prior dismissal of the goal of judicial impartiality as an unattainable "aspiration." And I disagree that embracing her biases is a good thing.

Judge Sotomayor's views on international law are also troubling. While the use or consideration of foreign and international law in judicial decision-making is not new and remains a subject of controversy, Judge Sotomayor appears to embrace using international standards or laws to decide U.S. constitutional questions.

I asked Judge Sotomayor about her thoughts on the use of foreign law. Her answers on this worrisome issue only confirm a contradictory position reflected in many of her public statements and an apparent endorsement of using foreign law as a source of creative ideas.

During the confirmation hearings, Judge Sotomayor was asked if she agreed that "there is no authority for a Supreme Court justice to utilize foreign law in terms of making decisions based on the Constitution or statutes." This was her response:

Unless the statute requires you or directs you to look at foreign law . . . the answer is no. Foreign law cannot be used as a holding or a precedent or to bind or to influence the outcome of a legal decision interpreting the Constitution or American law that doesn't direct you to that law.

She went on to say:

I will not use foreign law to interpret the Constitution or American statutes. I will use American law, constitutional law to interpret those laws, except in the situations where American law directs a court.

This seems fairly straightforward. But her answers to written questions are contradictory, saying:

In limited circumstances, decisions of foreign courts can be a source of ideas informing our understanding of our own constitutional rights.

To the extent that the decisions of foreign courts contain ideas that are helpful to that task, American courts may wish to consider those ideas.

This was not the only time she offered support for utilizing foreign law. On April 28, 2009, Judge Sotomayor gave a speech to the ACLU of Puerto Rico entitled "How Federal Judges Look to International and Foreign Law Under Article VI of the U.S. Constitution." Article VI makes the Constitution and subsequent laws the "supreme law of the land." In her April speech, she gave a broad defense of the practice by some American judges of looking to foreign and international law as a source of "good ideas" in deciding questions of American law. She stated that U.S. courts can use foreign law to "help us understand whether our understanding of our own constitutional rights [f]all[s] into the mainstream of human thinking."

Apparently, the sentiments Judge Sotomayor expressed this past April are not new. In 2007, she wrote a forward to a book on international judges, titled "The International Judge,"

where she assumed there is value to “learn[ing] from foreign law and the international community when interpreting our Constitution.”

I believe, and Justices Roberts, Scalia, and Thomas agree, it is illegitimate for judges to look to foreign sources for guidance in interpreting the Constitution and laws ratified and enacted by “We the People, of the United States.” Judge Sotomayor has also specifically criticized Justices Scalia and Thomas for their opposition to relying on foreign law to interpret the Constitution. She has even suggested that we will lose our influence globally if we are not open to foreign and international law.

While Judge Sotomayor acknowledges that judges are prohibited from treating foreign statutes or foreign court judgments as binding, she has publicly embraced their use in formulating decisions. Judge Sotomayor attempted to distinguish the “use” of foreign law to decide American legal questions from the act of “considering” foreign law by “us[ing] the ideas of foreign courts in some of our decision-making.”

According to Sotomayor, any effort to “outlaw the use of foreign or international law . . . would be asking American judges to . . . close their minds to good ideas.” She further stated, “How can you ask a person to close their ears? Ideas have no boundaries. Ideas are what set our creative juices flowing.”

I agree, good ideas are important. Aren’t we fortunate that our Constitution is full of them? And our Constitution will always be the supreme law of our land.

Unfortunately, we have already experienced the negative impact of so-called good ideas from foreign law and how some on the Supreme Court may be using them to erode our constitutionally protected rights. Let’s take a look at the controversial 2005 Supreme Court decision of *Kelo v. New London*.

It appears the global “good idea” of “Sustainable Development” from a U.N. Earth Summit may have influenced the majority decision to widely expand the definition of the “Takings Clause” and eminent domain from its original purpose—“public use” for bridges, roads, or traditional government uses.

In *Kelo*, I believe the Court incorrectly ruled against the private property owners, allowing the City of New London, CT, to transfer the private property from long-time homeowners to a private developer for what the city considered a greater “public purpose,” instead of public use to increase the city’s tax base.

Again, I believe this is a troubling interpretation of the Constitution, and the *Kelo* decision suggests the danger of allowing international or foreign good ideas to impact interpretation of U.S. constitutional questions.

I further fear that she may be less restrained by the text of the Constitu-

tion and more inclined to embrace judicial activism. Throughout her hearing, Judge Sotomayor insisted her judicial philosophy was, “fidelity to the rule of law,” and that judges are required to defer to the policy choices made by Congress. Unfortunately, she declined to explain how she would apply that principle in practical terms.

When asked how her commitment to the “rule of law” would guide her judgment on whether the Second Amendment protected a fundamental constitutional right against encroachments from States and local governments, Judge Sotomayor declined to answer other than to vaguely commit to look at the Supreme Court’s prior decisions. And when asked whether she views the Constitution as a “living, breathing, evolving document,” Judge Sotomayor professed that the Constitution “is immutable” and “has not changed except by amendment.”

Yet, once again, her own responses to Senators’ questions adopt a strikingly different tone. When asked to distinguish between judicial decisions that apply a broadly-written statute to specific circumstances based on a judge’s view of “common sense” and a legislative act that endorses and codifies a court’s decisions, Judge Sotomayor argued that a court’s action—with precisely the same practical effect as the action of the legislature—does not amount to “making law” solely because it is a judicial act.

If, as her written answers argue, Judge Sotomayor believes judges cannot make law solely because they are judges, her repeated disavowals of judicial law-making while sitting before TV cameras are essentially meaningless.

In conclusion, when thinking back on the phrasing engraved in marble above the entrance to the U.S. Supreme Court, “Equal Justice Under Law,” Judge Sotomayor’s record and testimony provide uncertainty and doubt that she will rule with a fair and impartial adherence to the rule of law. Therefore, I respectfully oppose her nomination because she has given no assurances that the Second Amendment is an individual, fundamental right; she has demonstrated a propensity to rule with purpose-driven results; she has indicated a particular interest in considering international standards or laws to decide U.S. constitutional questions; and her televised testimony contradicted much of her public record and professed judicial philosophy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, a decision as to whether to confirm a President’s nominee to the Supreme Court is one of the most significant decisions any of us will make during our Senate careers. The precedents that are established by the U.S. Supreme Court do not merely affect the litigants but the entire fabric of American society, often for centuries.

Justices of the Supreme Court enjoy life tenure. They are not accountable to the President who appointed them or to the Senators who voted to confirm them. They are not directly accountable to the American people. Yet it is undeniable today, as it has been since the founding of our Republic, that the Supreme Court is relied upon as the last line of defense against the loss of our liberties.

It is critical that the American people have the highest confidence in the Supreme Court and its objectivity. In a Democratic society, the credibility of any institution relies on the consent of the governed. Those who seek nomination to the Supreme Court must be ever vigilant in their words and in their deeds that they do nothing to undermine that credibility.

Mr. President, after lengthy, lengthy introspection, I rise this evening to inform my colleagues that I am unable to support the nomination of Judge Sotomayor to serve on the Supreme Court. This is a difficult result for me because I like Judge Sotomayor on a personal level. I visited with the judge for nearly an hour when she came through to meet with Senators. She is absolutely an engaging individual, and I left thoroughly impressed with her intellect and certainly with her resolve. She was open to my invitation to visit Alaska, and that invitation still stands.

The nomination of Judge Sotomayor, who would be the first woman of Puerto Rican descent to serve on the Supreme Court, is indeed a historic one. Many were disappointed that President Bush did not nominate a woman to fill Justice Sandra Day O’Connor’s seat on the Supreme Court. Justice O’Connor herself underscored the importance of placing women on the bench and in other high governmental positions in an interview with the *National Law Journal* that was published on May 26, 2009. So I am pleased that President Obama has nominated a woman to succeed Justice Souter.

Judge Sotomayor’s education and experience certainly qualify her for the position for which she was nominated—experience as a prosecutor and in the private practice of law, 17 years service on the Federal trial and appellate bench, a gifted and inspiring law professor.

Judge Sotomayor’s rise from the South Bronx to Princeton and Yale Law School is truly an American success story. Her excellence in practice as a prosecutor and private practice attorney is also an American success story. Her rise through the ranks of the Federal Court system is an American success story. And here in America, we celebrate success stories such as Judge Sotomayor’s.

But as much as I like Judge Sotomayor and am impressed with the obstacles she has clearly overcome, there are aspects of Judge Sotomayor’s record that make me uncomfortable. I have heard from about 1,400 Alaskans



who are troubled by what they know of Judge Sotomayor as well, and this discomfort arises from Judge Sotomayor's speeches as well as her decisions in key cases involving the second amendment and property rights.

Alaskans, by their nature, are independent thinkers, and this nomination has rightly engaged their attention. So let's begin with the speeches.

In the National Law Journal interview I referred to a moment ago, Justice O'Connor reasserted her viewpoint that "a wise old woman and a wise old man, at the end of the day, can reach the same conclusion." I agree with that conclusion. But this is a viewpoint that Judge Sotomayor has challenged in one form or another on some eight different occasions.

During the confirmation hearings I was looking for a simple, straightforward statement that Judge Sotomayor had come to appreciate that perhaps her remarks were ill-conceived; that she would not use those words if she were delivering those speeches today. During the confirmation hearings Judge Sotomayor used many words to justify and to explain her statements. She argued vigorously that she was misunderstood. But I am still not clear she understands the impact the plain meaning of her words had upon the American people or the impact they potentially could have on the credibility of the Court.

Many of my constituents in the State of Alaska are not impressed with this talk. Alaskans champion diversity. In the Anchorage school district where my children attended elementary and middle school, more than 90 different languages are spoken. About 20 percent of Alaskans are of Alaska Native ancestry. Yet we reject the notion that coming from a particular background makes you wiser than one who has a different background. Alaskans judge each person as an individual.

Alaskans respect those who respect our lifestyle and our values—hunting and fishing and sustaining one's self from the land, responsible development of our natural resources, and a government that restrains itself from intruding on the lawful choices of American citizens.

About 63 percent of our State is owned by the Federal Government. Alaska is constantly in Federal court defending attacks to our ability to access Alaska's lands and develop our economy, and often these issues end up before the Supreme Court. Many Alaskans were disappointed recently with the outcome of the Exxon Valdez punitive damages case. This may explain why so many Alaskans are so attuned to the objectivity of those nominated to serve on our Supreme Court.

We are initially suspicious of those who are educated at Ivy League schools and spend their entire careers in the Boston-Washington corridor. Alaskans wonder whether those with this background truly understand the slice of the American experience that we live

in the 49th State, and with good reason.

I would not expect that Judge Sotomayor would devalue her own experiences. But neither should she have suggested that the experiences of others would lead them to decisions of lesser wisdom. One's diverse background does not and should not diminish the value of another's experiences.

All of this leads me to question whether Judge Sotomayor will consider the pleas of those with experiences different from her own with the objectivity that is demanded of a Supreme Court Justice. My constituents are also troubled by the speech in which Judge Sotomayor expresses her notion that the appellate courts are where policy is made. Judge Sotomayor has subsequently explained that the point she was trying to make is that the courts of appeal establish precedent and the district courts do not. But there is a difference between policy and precedent, and my constituents don't believe Judge Sotomayor would have used the words "make policy" to mean "establish precedent."

They believe that she really did mean "make policy." Alaskans get nervous when courts make policy decisions. Particularly those policy decisions that infringe upon our constitutional rights, as Alaskans understand them.

And no constitutional issue concerns my constituents in Alaska more than the second amendment. They question whether Judge Sotomayor's experiences enable her to fully understand why people in the West fear the creep of government regulation on their second amendment right to bear arms. Judge Sotomayor has dealt with second amendment issues on two occasions. Neither inspires confidence.

Let me focus on the 2009 Maloney decision. Maloney presented the question whether the second amendment protects citizens from State interference with their right to keep and bear arms. It was heard by a three judge panel in the Second Circuit. Judge Sotomayor served on that panel. Maloney was one of the first cases to construe the second amendment following the Supreme Court's landmark 2008 decision in *Heller*.

Judge Sotomayor's panel held that the second amendment did not protect citizens from state interference. It reasoned that it was constrained by the U.S. Supreme Court's 1866 decision in *Presser v. Illinois*.

But as the Supreme Court explained in *Heller*, the *Presser* case said nothing about the second amendment's meaning or scope, beyond the fact that it does not prevent the prohibition of private paramilitary organizations.

Maloney had nothing to do with private paramilitary organizations. The sole question in *Maloney* was whether the State of New York could ban the possession of a particular kind of weapon.

A three judge panel in the Ninth Circuit, a circuit which is often regarded

as one of the more "liberal" circuits, reached quite the opposite conclusion from Judge Sotomayor's panel. The case was *Nordyke v. King*.

It concluded that *Heller* left little doubt that the second amendment is a fundamental right. Accordingly the second amendment is incorporated into the 14th amendment and applies with equal vigor to the States. To the Ninth Circuit panel this was not a question of ideology or judicial activism. It was the undeniable outcome of *Heller*'s reasoning.

But if Judge Sotomayor and her colleagues really believed that courts of appeals must await additional guidance from the Supreme Court before determining whether the second amendment constrains State action they could have stopped there. Instead, the Sotomayor panel went on to conclude that the rights secured under the second amendment are not fundamental rights. It was not necessary to reach any conclusion on this issue because the panel had already decided that the second amendment doesn't apply to the States. So why did Judge Sotomayor's panel go out of its way to make this point?

I am also disappointed that Judge Sotomayor did not write a separate opinion in *Maloney*. On a question as significant as whether the second amendment is a fundamental right, I would have expected that Judge Sotomayor would have written a thoughtful and scholarly opinion. Instead she signed on to an analysis of the second amendment that is widely regarded as superficial.

Unfortunately, this is not the first time that Judge Sotomayor failed to write a substantial opinion on a significant constitutional issue. Some of my colleagues have discussed their concerns with Judge Sotomayor's handling of the New Haven firefighters' case.

I would like to take a moment to discuss the *Didden* case which involves property rights and constitutional limits on the scope of eminent domain.

The reasoning of *Didden* is particularly perplexing. The panel on which Judge Sotomayor sat concluded that *Didden*'s constitutional challenge to the taking of his property was time barred. If a suit is time barred there is no reason for judges to reach the merits of the case.

Yet for reasons I cannot fathom, Judge Sotomayor's panel went on to do just that. They performed a superficial analysis of whether the taking of a piece of private property by a municipality for a drugstore is a constitutionally permissible public purpose. The Supreme Court invited lower courts to scrutinize a claim of public purpose to determine whether it is pretextual. Judge Sotomayor's panel never analyzed this question.

They simply concluded that *Didden*'s constitutional rights were not violated. This analysis was dicta. Not necessary to the outcome of the case. But it is a most troubling piece of dicta because it

undermines the constitutional protection for private property. It could be used to limit the rights of litigants in other cases.

My professional training is no different than that of the other lawyers in this body. In law school you spend 3 years reading appellate decisions day in and day out. Hundreds of appellate decisions—over a 3-year period. We are taught that the measure of a judge is in the quality of her analysis.

The strength of a judge's reasoning is as important, if not more important, than who wins and who loses. It is important because that reasoning is part and parcel of the precedent that is used in deciding future cases.

In three separate cases of significant constitutional import, Judge Sotomayor's panel failed to provide the rigorous analysis we commonly expect of future Supreme Court Justices. That troubles me deeply.

I appreciate that the decision of who to nominate to the Supreme Court belongs to the President. However, if advice and consent is to be meaningful the Senate cannot be a mere rubberstamp on the President's decision.

My decision to oppose Judge Sotomayor's nomination is not based upon partisanship, ideology or the recommendations of any outside interest group. It is the product of reservations I have about the positions that Judge Sotomayor has taken in speeches on multiple occasions over a period of years. It is based on the brief and superficial treatment she has given to important constitutional questions. Equally troubling is the fact that about 1,400 Alaskans have arrived at the same conclusion.

This is not the conclusion I would have preferred to announce but it is one that is compelled by Judge Sotomayor's record.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. SESSIONS. Mr. President, we had a number of Members discuss the second amendment issue that was dealt with by Judge Sotomayor in two different cases. It is an important question and I think her nomination raises very serious concerns about it. I would like to try as fairly as I can to analyze the circumstances in her dealing with these issues and why I think it is a problem that Senators rightly have objections to.

The second amendment is in the Constitution. It is the second of the first 10 amendments. It is part of the Bill of Rights. If you remember, the people were not so happy with the Constitution. They wanted to have a guarantee

of individual rights that they as American citizens would possess no matter what the Federal Government or anyone else wanted to do about it. So they passed the right not to establish a religion, free speech, free press, the right to jury trial and other matters of that kind in the first 10 amendments, as adopted.

The second amendment was one of those, of course. It says:

A well regulated militia being essential to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

The right of the people to keep and bear arms shall not be infringed.

Over the years, laws have been passed that caused difficulties and that began to overreach with respect to the second amendment right. The American people have gotten their back up, as the Senator from Alaska told us, Senator MURKOWSKI. People in Alaska, people in Alabama, people all over America are concerned about this. It is a constitutional right. It has been there since the founding of the Republic.

I think most scholars have believed for some time that it is, in fact, an individual right, that the first clause regarding the well-regulated militia did not undermine the final declaratory clause which said:

The right of the people to keep and bear arms shall not be infringed.

But no Supreme Court case had ruled on that squarely until last year when the Supreme Court took up the Heller case, which was in the Federal city we are in today, DC. The Supreme Court in the Heller case said it was an individual right and it prohibited the city of Washington, DC, from effectively barring any citizen in the District from having a gun.

It was an exceedingly broad ban on guns. But I would note something that ought to be remembered: It was a 5-to-4 decision—four members of the Supreme Court did not agree. Some people do not agree.

One of our Democratic colleagues yesterday said of the result in Heller, that it was "a newly minted and narrowly enacted constitutional right."

That is cause for concern. The Constitution, I don't think, is newly minted. I don't think the Court created a right. I think the Court simply declared a right that was plainly in the Constitution. So this is part of our concern.

I would suggest that it is a fragile right, however, based on the way some of the courts have been ruling and based on how Judge Sotomayor ruled.

Somebody had raised the point several times that it is somehow not right that the National Rifle Association here, at the end, after the hearings, declared that they think that Judge Sotomayor should not be confirmed. Certainly they were reluctant to be engaged in this debate. But for the reasons I would note—and Senator MURKOWSKI and others have noted—I don't think they had much choice, because it

is a critical thing we are dealing with here, the next appointment to the U.S. Supreme Court.

In a year after the Heller case was decided that the right to keep and bear arms is a personal or individual right and it cannot be abridged by the Federal Government, the case came before her as to whether the second amendment applied to States and cities.

What if other cities were to declare that you couldn't have a gun in the city, or a State were to declare you couldn't have a firearm, or if a State were to place massive restrictions on the use of personal weapons? She took that case, the first major case after Heller to deal with this issue. Anyone who is familiar with the appellate courts in America, as this judge would be, would know this was a big, big, big case, a case of great importance coming on the heels of the widely discussed Heller decision. In it, she rendered an exceedingly short opinion. In it, she found it was "settled law" that the second amendment does not apply to individual Americans in States or cities. The city or State could completely bar them from having any kind of gun.

In the Heller case, to be fair with her, this is what the circumstances were. There was an old 1800s case that basically held this way. It basically held that the second amendment did not apply to the States. I think the judge could rightly conclude that she may have been bound by that case. However, in the Supreme Court decision, they put a footnote in it and said: we are not deciding the question of whether the second amendment applies to the States because we are deciding a case in the District of Columbia, and the law in the District of Columbia is not city law. The law in the District of Columbia is U.S. Government law. They put a footnote and indicated that the incorporation doctrine was out there, but that they would review that in the future.

My first point is this: I don't believe it would be appropriate to say it is settled law that the second amendment does not apply to the States after the Heller case. That troubled me that she said that.

Judge Sotomayor made a decision in the Maloney case, the first major case after Heller. It was only eight paragraphs in a case that everyone knew was of great importance. And only one paragraph dealt with the question of whether the second amendment would apply to the States. Those who have supported Judge Sotomayor have correctly noted that the seventh circuit heard the same kind of case some months later and they agreed with the Maloney case and Judge Sotomayor. They spent, however, a number of pages on it. They spent 2½ pages on the question of whether it was incorporated against the States. But they concluded that even with the footnote in the Heller case, they concluded that the more clear authority was still this old case that is out there in the 1800s.

They did not say, however, that it was settled law.

The ninth circuit took up the very same case just a few months after Judge Sotomayor's Maloney decision. In a 19-page opinion that discussed in great depth the important constitutional issues, the panel said, when you read the Heller decision, when you consider the footnote of the Supreme Court's opinion where they said they didn't explicitly decide whether it applied to the States, they found differently. They found the second amendment does apply to the States and cities, and the States and cities must comply with it, and they can't ban all guns. They found not only that it was not settled law. To the contrary, they found that the footnote in the Supreme Court opinion "explicitly left open this question." And because they found the question was left open by the Supreme Court, they felt they were authorized to consider the constitutional laws and questions that are important and render a decision that they thought was the right constitutional decision. That is why they went forward in that fashion.

At the hearing, the judge was asked a number of questions about this. I didn't find those questions answered very persuasive, frankly. In some instances, I found them confusing. There was no retreat that I heard from this untenable position. In answering questions from Senator HATCH, the judge said that:

The Supreme Court didn't consider [the second amendment] fundamental [in the Heller case] so as to be incorporated against the state. . . . Well, it not only didn't decide it, but I understood Justice Scalia to be recognizing that the [C]ourt's precedent held that it was not fundamental.

In the course of her decision she also found a critical question, that the second amendment is not a fundamental question. The judge was just wrong on that in a big, big case. It is the kind of thing you shouldn't make a mistake on. In the majority's footnote on this issue, the Court expressly reserved the question of whether the second amendment applies to the States. The footnote said this:

With respect to Cruikshank's one of the old cases

—continuing validity on incorporation, a question not presented in this case . . .

So they explicitly said that they didn't were addressing this issue. But it is pretty clear that the doctrine that allows the Bill of Rights, the first 10 amendments, to apply to the States. That doctrine has developed dramatically in the 20th century, over the last 100 years. Virtually every one of the 10 amendments has been incorporated against the States. But the Second Amendment has not yet been applied to the States. To me, that is an odd thing in light of the doctrine of the incorporating of the first 10 amendments as protections for individual Americans against both the Federal Government and State and local governments. That

doctrine has developed great strength and power over the last 100 years. Few people would want to go back. I think most people would be awfully surprised to learn that the second amendment would not be one of those applied to the States. It certainly, in my opinion, is not settled law.

This case was dealt with in a most cursory manner. It dealt with a matter of huge national importance. It is the kind of case that legal scholars watch closely. It was an exceedingly short opinion, a few paragraphs. It showed little respect for the seriousness of the issue. It didn't discuss it in any depth. It incorrectly stated it was settled law that the second amendment would not apply to the States. These are the problems we have with it.

Judge Sotomayor now seeks to be on the Supreme Court. And with regard to the 5-to-4 decision in Heller and to the question of whether she should recuse herself, as asked by Senator KYL, she indicated that if her case came up, she would recuse herself. It could come before the Supreme Court. It is that important. But if one of the other cases raising exactly the same issue came up, she refused to say she would recuse herself. Of course, if her case comes up, it is a matter of ethics that she would have to recuse herself. I thought that since having already clearly decided precisely the same issue the Supreme Court would have to deal with, she ought to have indicated to us that since she expressed her opinion on it, she wouldn't sit on the case. But that did not happen.

I will share likewise another concern we have about the firefighters case and how that was handled in such a short manner. The firefighters contended that they had studied hard. They had passed a promotion exam. They were on the road to being promoted. The city, because of political complaints about the fact that certain groups did not pass the test in a way that raised concerns, decided they would give up and not have the test and wipe out the test and not follow through with the test. The firefighters felt they had done everything possible, and they challenged that. Indeed, later the Supreme Court held that no evidence was ever presented that the test was not a fair and good test. Indeed, they had taken great care to get good people to help write the test in a way that would be neutral and fair to all groups of people and would not have any kind of unfair advantage.

When that case came before the judge, I was very disappointed that she and her panel treated it as a summary order. A summary order is reserved for cases that present no real legal question. Summary orders are not even circulated among the other judges in the circuit. Here, it was a summary order that did not even adopt the opinion of the lower courts that had ruled in this fashion. It just summarily dismissed the firefighters' claim and rendered judgment in favor of the city which

had altered the plan for promotion. It was basically done because of their race.

The equal protection clause of the Constitution says that all American citizens are entitled to equal protection of the laws, regardless of race. That is what their complaint was, one of the complaints. I would note that this was not even an opinion. It was basically a line or two summarily dismissing this.

Then one of the other judges on the court apparently found out this opinion had been rendered in a case that struck him, apparently, as a matter of real importance, a case that ought not to be disposed of by a summary order, that the firefighters were at least entitled to an opinion. And by the way, they never got a trial. Basically it was dismissed prior to trial on motions. So after great debate within the circuit, a little bit of a dust-up within the circuit, by a 7-to-6 margin, Judge Sotomayor casting the decisive seventh vote, they decided not to rehear the case and any precedent that may exist in the circuit. But at that point, I guess as part of the process of confrontation that arose there, the panel issued an opinion that adopted the lower court opinion, a procuring opinion. They didn't write their own opinion but basically adopted the lower court's opinion.

It was from that decision, as a result of by chance another judge heard about it, not through the normal processes but, according to Stuart Taylor's article, from seeing it on television, that the case got some attention. And the Supreme Court agreed to hear it and reversed the case and rendered a judgment in favor of the firefighters. I think that was not responsible. That was a huge case of major constitutional import. It should have been written in detail. Any person, any judge should have done that, particularly one who would be considered for the Supreme Court.

So I will say those two opinions to me are troubling in that I think they were wrong, No. 1. And No. 2, they were exceedingly short, too short, when you consider the seriousness of those issues.

I yield the floor.

Mr. ENZI. Mr. President, I rise today to discuss the nomination of Judge Sonia Sotomayor to serve as an Associate Justice of the U.S. Supreme Court. Judge Sotomayor has a long career as a jurist with many cases for Senators to review and determine how she may address cases brought before the Supreme Court. Judge Sotomayor is clearly an accomplished attorney and intelligent person who overcame many obstacles and came from a humble beginning to rise to this nomination. However, in that long record I have found a tendency to at times place more emphasis on personal experience than the most fundamental parts of our Constitution.

I must oppose Judge Sotomayor's nomination.

I am concerned about Judge Sotomayor's past rulings and statements during the Senate Judiciary Committee hearings about the second amendment as a fundamental right. The Supreme Court's ruling in 2008 in the *Heller* case confirmed that the second amendment's right to keep and bear arms includes the right of American citizens to have weapons for personal self-defense. The Supreme Court has not yet reviewed an incorporation case involving the second amendment, but its second amendment opinion last year noted that a due process analysis is now required. Earlier this year, when Judge Sotomayor and the Second Circuit Court of Appeals ruled on *Maloney v. Cuomo* determining that the second amendment is not a fundamental right, they relied on rulings from the 1800s rather than following the 2008 Supreme Court ruling.

The second amendment of our Constitution guarantees the fundamental right of an individual to keep and bear arms. This is clear to me and a clear legal precedent set by the Supreme Court.

As a father and grandfather, who strongly believes in the rights of the unborn, I am also troubled by Judge Sotomayor's past affiliation and leadership of an organization, the Puerto Rican Defense and Education Fund, which has taken positions on abortion that I find unsettling. Judge Sotomayor's case record does not include direct rulings on abortion issues, so we must look at her history with this organization. The fund, while Judge Sotomayor served in a leadership capacity, filed briefs with the Supreme Court not only supporting abortion rights but in support of Federal funds for abortion services. I could not disagree more with these positions, and I cannot help but wonder how Judge Sotomayor would use her experiences with the fund to rule on a possible case before the Supreme Court. Unfortunately, she would not provide a satisfactory answer or position when my colleague from Oklahoma, Senator COBURN, asked her direct questions during the Judiciary Committee process.

The issue of international law is another area of concern. Judge Sotomayor has stated that ideas have no boundaries, but we must remember that nations do have boundaries as well as laws that govern actions within those boundaries. The U.S. Constitution is the highest law of our land and the basis of our Nation's sovereignty. It may be good and well for academics to discuss international laws, or even domestic laws of other countries, as they compare to the United States, but when making a ruling, a member of the U.S. judicial branch must rely on the laws of this Nation.

Finally, I would like to address the issue of judicial impartiality. Judge Sotomayor's statements about her ability to judge cases better than others based on her background are cer-

tainly troublesome. These statements have been vetted in the Judiciary Committee and certainly through the media. The statements warrant further discussion, however. As public figures, I, and the rest of my colleagues, may be faced with situations where a comment can be taken out of context. A comment that is repeatedly used in prepared remarks, however, should be interpreted as showing the true thoughts and beliefs of the speaker.

I believe the United States is a great nation because of the foundation of our government, one element of which is an independent judicial branch where we believe that justice is blind. This is a critical element of our system and a part of the judicial oath. I can agree that our personal backgrounds lead us to look at situations differently, but I cannot agree that judges should allow their backgrounds to determine a case. Judicial decisions must be based on facts. When the facts or the Constitution comes into conflict with Judge Sotomayor's feelings and past experiences, I am not confident which side she will ultimately take.

I voted against Judge Sotomayor's nomination in 1998 to the Second Circuit Court of Appeals. At that time, I shared the concern of many of my colleagues about Judge Sotomayor's positions and her view of the role of the Judiciary. While I hold Judge Sotomayor in the highest respect, I believe my concerns then are borne out by her record now. I have no reason to believe anything will change in the future.

I understand that Judge Sotomayor has support from many of my colleagues, and I hope they will listen to the concerns I and others are raising. I hope they will take the time to fully consider the impact of Judge Sotomayor's positions on future decisions of the Supreme Court as the Court's decisions will affect our entire Nation.

**THE PRESIDING OFFICER.** The Senator from Pennsylvania.

**Mr. CASEY.** Mr. President, I rise tonight, as so many have, in the last several days, especially to speak about the nomination of Judge Sonia Sotomayor to be on the U.S. Supreme Court.

As we all know, she is a distinguished Federal jurist who has been nominated to serve as an Associate Justice on the U.S. Supreme Court—a critically important decision that the Senate is charged with making to advise and consent on such nominations.

Sonia Sotomayor's life story is an authentically American story. It is a story with which so many people in this capital and across the country can identify. It is a story of hard work and sacrifice. It is a story of struggle and triumph, overcoming barriers in her life that, candidly, many in this Chamber have not had to overcome.

It is a story, like so many authentically and compelling American stories, that starts with her family and, in particular, her parents, not people of tremendous means or wealth. Her

mother was a nurse, her dad was a factory worker, and she, unfortunately, lost him at a very young age. I think she was just 9 years old when her father died—a very difficult circumstance for anyone to overcome, especially a young girl.

When we look at her record as a student, it is also a great American story of academic excellence, and I believe that is an understatement. Her record as a student through high school and then going on to Princeton and graduating with honors and going to Yale Law School and serving on the Law Review and being such a leader and a student in both college and law school—not only being a leader but also achieving academic excellence—is a record we would hope every member of the U.S. Supreme Court could bring to their nomination debate.

I was reflecting the last couple of days about my remarks tonight, and I remembered that when our President, President Obama, was campaigning, I had the chance to introduce him a number of times. One of the times I introduced him, I was trying to convey the reality of what he had overcome, and it is very difficult to put that in a few words. But I said at the time, in one particular place in northeastern Pennsylvania, that then-Senator Obama did not have a path cleared for him, that he had to overcome barriers and obstacles in his life growing up, as a public official, and all the way to the Presidency.

The same can be said of Judge Sotomayor. She had not, in her life—and has not to this day—ever had a path cleared for her. She has had to work and struggle and achieve to get where she is today, to the point of being on the verge of being confirmed to serve on the Supreme Court.

So I think it is very important to point out her life story, her remarkable life story, her achievements, but also to speak, as we must, and as we should, of her judicial expedience.

We hear all kinds of comparisons, when someone is nominated to the Supreme Court, about how many years they have served as a judge, how many years they have served as a lawyer or as an advocate or as a public official—whatever their background is. But it just so happens this particular nominee, Judge Sotomayor, has more judicial experience, I am told, than anyone currently sitting on the U.S. Supreme Court—all distinguished in their own way. But if you add up the years, I guess it is 17—first on the district court, the trial court in New York, for the Southern District of New York—nominated and confirmed by the Senate—and the same when she was confirmed and served as a judge on the U.S. Court of Appeals for the Second Circuit at the appellate level. In both of those appointments, she gained enormous experience on the very matters that will come before the U.S. Supreme Court.

First, she was on the district court where you have litigants coming before

you, for example, in a trial or in a hearing—sometimes a criminal matter that involves someone's liberty, involves law enforcement issues, and all the complexities of our human condition in the context of a criminal case. Also coming before that court are very complex civil matters, and I know the record is replete with references to her rulings in various cases involving civil, criminal, and other matters.

Then she went to the appeals court, working in a different court, with a different set of issues and, candidly, a different procedure, where someone is appealing to the Federal appeals court, in this case, in the U.S. Court of Appeals for the Second Circuit—all the complexities that involves, where you are not taking testimony as you do in a trial, not making determinations of fact, you are deciding the law, what the law should be, how to apply the law to the facts in the record, which is already established.

Both are very different judicial responsibilities, but both are very important to serve on the ultimate appellate court, the top court in the land, that being the Supreme Court.

So she has had broad and unprecedented experience as a Federal judge for 17 years. That is very important in this debate.

She also served as a prosecutor dealing with all of the complexities and all of the difficulties that any prosecutor encounters, dealing with victims and the impact of a crime on a victim and his or her family, dealing with the impact of crime on a community and in a jurisdiction, dealing with judges and witnesses and law enforcement with whom often you work so closely—the prosecutor—to develop your case, to marshal the evidence that a prosecutor has to put before a judge and jury.

That experience is particularly relevant because a number of the cases the Supreme Court will hear—and they do not hear every case; they take a number of cases per year—some of those cases will involve the rights of one party versus the other, will involve the rights of a criminal defendant versus the State. There are very complex matters that a Supreme Court Justice has to decide.

So whether you look at her experience as a prosecutor, as a Federal district court judge, a trial judge, or her experience on the appellate court—hearing appeals at the Federal level—all are very relevant to and I think prepare her well for her service on the U.S. Supreme Court.

Two more sets of experiences—one as a lawyer. I think it helps when you have been an advocate, a lawyer, to have that as part of your experience serving on the Supreme Court, where you have had to take on a battle for a client, to be their advocate, sometimes in very complicated matters, sometimes matters that will affect their lives in ways that will alter the course their life is taking when they have a matter before a court.

Finally, her life experience. I would hope we nominate people to the Supreme Court who have a broad life experience, who have not just been in one area of a profession, but also have had challenges in their lives they have had to overcome because the people who come before the Supreme Court may be a little bit distant, but often arrive there after months or years or longer of struggle.

I think Judge Sotomayor has a life story that indicates she not only understands struggle and understands how difficult life can be, but also has an appreciation for the complexities of life as well. She has been described, as a judge and as a prosecutor, as both tough and fair—tough and fair. That is a good description that you would want, when you are evaluating the role and the record of a Supreme Court Justice—someone who asks difficult questions and probing questions as a member of the Court, but also someone who is fair, who does not seek to gain an advantage over a lawyer in the course of an argument but is both tough and fair.

I believe integrity is a central consideration that Senators should weigh when we are deciding who serves on the Supreme Court after a President nominates. We want someone with broad life experiences. We want someone with experience in the law and often as a judge. But we also want someone who has character.

I got a sense of that when I met with her. I also got a better sense by reading the long list, which I will not read tonight, of all the organizations that have endorsed her. They did not just endorse a set of cases. They did not just endorse a resume. They endorse and give their support to a human being, a person who has had tremendous experience. And part of that, of course, is integrity.

I think we saw both her integrity and her temperament, which is another very serious consideration. But we saw both of them tested in the course of her hearings, where she was asked a lot of tough questions by members of the Senate Judiciary Committee on both sides of the aisle, Democratic Senators and Republican Senators—hour after hour after hour, day after day, under very difficult circumstances, on live television, with all of the pressure that every word, every response is weighed and scrutinized and criticized often and examined. I think both her integrity and her temperament were on display, and, in my judgement, she passed both of those tests in considerations we have to weigh, that she passed them so easily and so effectively.

I would make two more points. Inscribed over the building that houses the courtroom where the U.S. Supreme Court meets—that historic room where so many great cases have been decided—inscribed over the building, above it, is the phrase we all know well: “Equal Justice Under Law.” “Equal Justice Under Law.” That is what we expect certainly of every

judge, even lawyers, but especially someone who becomes a U.S. Supreme Court Justice; that they would have that philosophy in every case, but also the reality that precept entails, that they would approach every case, every litigant, every party with the same approach, dispensing equal justice under the law—not equal justice under my law or equal justice under a philosophy of, in this case, Judge Sotomayor as a Supreme Court Justice, not her definition of what the law is, but what the law is, in fact, that she is required to apply.

That equal justice under law is not just something inscribed above that building. I believe, based upon her record, based upon her experience, and based upon her character, she believes that and will be governed by that as a member of the U.S. Supreme Court.

I conclude with this thought. When President Lincoln was speaking at Gettysburg, PA—a place we all learned about as children and learned about the Gettysburg Address and the meaning of it and the enduring value of that speech—in one of the lines Lincoln used in that speech, he was talking about the Nation being tested at a time of war, and, unfortunately, at that time, a time of civil war, the worst of all wars. He was posing the question about this Nation that had been conceived not too long before he gave that speech. He said that one of the questions he posed was whether a nation so conceived can “long endure,” whether our Nation could long endure, that we were being tested at a time of war.

I believe our Nation has been tested at other times as well, not only in something as grave as a war, but we are tested in other ways as well. We were tested in the Great Depression, whether we could endure the misery and the difficulty, the joblessness of that, and all of the problems the Depression brought to America. We have been tested in other wars. We were tested in the battle for civil rights. We have been tested as a nation very often—maybe not every day, maybe not every week, but at some period of time in our lifetimes, we can see how our Nation was tested. In some ways, we are tested when debates occur in the Senate. We are tested in terms of appointments that a President makes.

In this case, President Obama has nominated someone to the U.S. Supreme Court who I believe will allow us to be able to say that as long as we are nominating people with the experience, the character, and the integrity of Judge Sonia Sotomayor, this Nation will long endure. I have no doubt about that. I say that with as much confidence as anyone could because her record demonstrates that. Her experience demonstrates that if we have people such as Judge Sotomayor in the U.S. Supreme Court, this Nation will not only long endure, it will indeed thrive under that kind of judicial excellence and that kind of experience she will bring to the bench. So I have

no hesitation at all in saying that I will vote for her confirmation to be an Associate Justice of the Supreme Court. We can be proud of her record and her experience but also her remarkable and authentically American story.

Before I conclude my remarks, I ask unanimous consent to have printed in the RECORD a letter of endorsement for Judge Sotomayor that the Judiciary Committee received on July 15 from the National Hispanic Christian Leadership Conference, serving approximately 16 million Hispanic American born-again Christians and 25,434 member churches across the country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Hon. PATRICK J. LEAHY,  
*Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.*

Hon. JEFF SESSIONS,  
*Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS:

America's largest Hispanic Christian Organization, The National Hispanic Christian Leadership Conference (NHCLC), serving approximately 16 million Hispanic American Born Again Believers via 25,434 member churches, hereby endorses Judge Sonia Sotomayor's nomination to the Supreme Court.

We commend President Obama's selection of Sotomayor as a brilliant exercise in pragmatism and moderation. First, as Hispanic Americans, we celebrate her nomination. Her journey is our collective journey. Sotomayor stands as a model to all our Hispanic young people throughout America that faith, family and education can overcome the most difficult of environments and economic circumstances.

More importantly, as Americans concerned with judicial activism and defacto legislation from many sectors of our judiciary, Sotomayor reflects, via her career on the bench, the type of tempered restraint and moderation necessary for appropriate application of the rule of law. Without a doubt, Judge Sotomayor serves with a moderate voice without displays of bias towards any party based on affiliation, background, sex, color or religion. Judge Sotomayor's over 700 decisions stand as testimony of a commitment and respect for the rule of law, particularly the importance of stare decisis.

As an organization serving America's largest minority group and the fastest growing religious demographic, we seek to reconcile both the vertical and horizontal planes of the Christian message. As we serve both matters of the soul and community, religious liberties stand as an issue of utmost concern for our constituents. Judge Sotomayor's rulings affirm Constitutional safeguards for those liberties.

In conclusion, even moderate and conservative evangelicals within our ranks find no reason to conclude that the nomination and confirmation of Judge Sonia Sotomayor would diminish the collective application of Constitutional rights and freedoms to a religious community committed to Life, Liberty and the Pursuit of Happiness. For that matter, we encourage the support of this nominee from both sides of the political aisle.

JESSE MIRANDA,  
*CEO, NHCLC, President of  
Miranda Center for Hispanic Leadership.*

Mr. CASEY. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, before I discuss the nomination of Judge Sotomayor, I wish to take a moment to thank all of my colleagues here in the Senate for their very warm welcome and hospitality. I joined this body a little less than a month ago, but I have been humbled by this institution, by the work that goes on here, and, most importantly, by my colleagues. It is an honor to represent the people of Minnesota, and it is a special privilege to do so here in the Senate.

One of my first responsibilities on joining the Senate was to participate in the nomination hearings for Judge Sotomayor. I said at the start of the hearings that I wanted to be a voice for the overwhelming majority of Americans who aren't lawyers. The actions of the Supreme Court directly affect the everyday lives of all Americans. Whom we choose to place on the Supreme Court affects every one of us. That is what I want to do this evening. I want to put the nomination of Judge Sotomayor in context. I want to put it in the context of what the Supreme Court has done these past 5 years and how that has affected the lives of Minnesotans and of all Americans.

Our country is going through some tough times. We are experiencing the highest unemployment in decades. Businesses are failing. Investors are seeing their investments shrink, even disappear. Yet, despite all of this, despite our faltering economy, in the past 5 years this Supreme Court has restricted the rights of Americans as employees, as small business owners, and as investors, and they have done this by overturning longstanding precedents.

Let me put this in the context of Minnesota. Ten years ago, Minnesota had an unemployment rate of 2.8 percent. Let me repeat that. Ten years ago, Minnesota had an unemployment rate of 2.8 percent. Today, it is 8.4 percent. In certain counties, it hovers between 13 and 14 percent. At the same time, Minnesota has an older workforce. The Twin Cities are fourth in the Nation in the percentage of seniors working past the age of 65. When businesses are making tough personnel decisions, you can bet they are taking a good hard look at older workers who have higher pension and health care costs.

But just last month, the Supreme Court eviscerated the one law designed to prevent discrimination against older workers: the Age Discrimination in Employment Act, or ADEA, as it is called. Because of this case, the Gross case, it is not enough for a worker suing for age discrimination to show he or she was fired improperly because of their age. Under this new standard, an older worker must now show that age was the single determinative reason for the firing. This is a difficult, if not practically impossible, standard to meet. This also breaks with the long-

standing rule that the ADEA must be interpreted the same as title VII of the Civil Rights Act which protects women and minorities against discrimination in the workplace. Because of the Gross case, Minnesota's older workers have fewer rights in the workplace precisely when they need them the most.

This was the same Court that 2 years ago barred a title VII suit by Lilly Ledbetter, a woman who was paid less than her male colleagues for the same work for two decades. Minnesota women are paid 74 cents for every dollar earned by men. Until Congress fixed this ruling last year through the Lilly Ledbetter Fair Pay Act, this was yet another ruling that limited Minnesotans' rights in the workplace.

This Supreme Court has put Minnesota's small business owners in a similar position. Like entrepreneurs around the country, Minnesota business owners are struggling. Business bankruptcies in our State increased 40 percent between 2006 and 2008, and it will likely be worse in 2009. If there were ever a time small business owners in Minnesota needed a leg up, it is right now. But 2 years ago, this Supreme Court overturned one of the strongest protections small business owners have under the Sherman Act, our main antitrust law. For over 100 years, it has been illegal for manufacturers to price-fix—to force retailers to sell their goods at a certain price. Today, thanks to this Court's ruling in the Leegin case, price fixing is now permitted. In fact, the burden is now on consumers and small business owners to show, through a complex economic analysis, that the price fixing hurts them.

This Court has been no kinder to investors. Like almost all American investors, Minnesota investors are reeling from the trillions of dollars in losses in the stock market. These losses were partly caused by structural deficiencies in our finance system, but they were also caused by speculation and by fraud, by people such as Bernie Madoff and Tom Petters, a Minnesota financier who is in prison right now charged with a \$3.5 billion scheme that bilked stockholders in a number of Minnesota companies. Yet, last year, the Supreme Court handed down a decision that severely limited investors' ability to defend themselves against securities fraud. In the Stoneridge case, the Supreme Court said that an investor cannot sue an outside accountant or a lawyer who worked with a company to fraudulently alter its financial records to deliberately cook its books unless that third party somehow, for some reason, publicly announced its involvement.

Together, the Age Discrimination in Employment Act, title VII of the Civil Rights Act, the Sherman Act, and the Securities Exchange Act are some of the strongest protections employees, small business owners, and investors



have under American law. These laws help to level the playing field for the less powerful in our society. Yet, in each of these cases, for each of these laws, this Supreme Court has ignored longstanding precedent and original congressional intent to limit the rights these laws afford precisely when they are needed the most.

The Supreme Court's willingness to ignore longstanding precedent to restrict individual rights is not limited to our economy. This same Supreme Court recently overturned a 30-year rule that requires that a woman's health be taken into account in any law regulating her right to choose.

The Court is also poised to overturn critical protections to voters. This Supreme Court has questioned the constitutionality of section 5 of the Voting Rights Act, even though the 15th amendment expressly grants Congress the power to regulate elections and even though Congress recently voted to reauthorize those provisions for the fourth time by a vote of 98 to 0. Talk about judicial activism. This is judicial activism. This is the Supreme Court questioning the constitutionality of a law passed by Congress under an explicit and exclusive grant of power granted in the Constitution of the United States.

If she is confirmed, the first case Justice Sotomayor will hear will reconsider the constitutionality of sections of McCain-Feingold that the Supreme Court upheld just 6 years ago. The underlying principle in question goes back over 100 years to the Tillman Act of 1907. For 100 years, Congress has said with increasing force that corporations should not be spending money on Federal election campaigns. Yet this Court is poised to contravene that 100-year-old rule and its own ruling on the identical provision just 6 years ago. Again, I think this is judicial activism. In fact, I think it is judicial activism in one direction: away from longstanding protections for the individual and toward a more friendly law for the powerful.

As I said last week, I firmly believe that in this context, with this Supreme Court, a vote for Judge Sotomayor is a vote against judicial activism. In a careful review of her opinions as an appellate judge, the nonpartisan Congressional Research Service recently concluded that:

[p]erhaps the most consistent characteristic of Judge Sotomayor's approach as an appellate judge has been an adherence to the doctrine of stare decisis—

The upholding of past judicial precedents. Of the 230 majority opinions Judge Sotomayor wrote as an appellate judge, the Supreme Court has reversed only 3. That is 3 reversals out of 230 majority opinions.

But the best examples of Judge Sotomayor's inherent judicial restraint are the two cases for which she has ironically received the most criticism—the Ricci case and Maloney v. Cuomo, the Second Circuit's most re-

cent second amendment case. In both of these cases, Judge Sotomayor simply followed the Supreme Court's own maxim that it is the Court's—the Supreme Court's—prerogative alone to overrule one of its precedents. When a three-judge panel in Ricci affirmed the district court's decision, it was simply following existing title VII law. When the three-judge panel in the Maloney case said that the second amendment does not apply to the States, it was simply following a 120-year-old Supreme Court precedent that said exactly that. Moreover, a three-judge panel on the Seventh Circuit that included two of the most prominent negligent conservative judges in the country, Frank Easterbrook and Richard Posner, reached the same exact conclusion unanimously.

Judge Sonia Sotomayor is a judge who follows and respects precedent. She is a judge who does not make new law.

In fact, it seems that Judge Sotomayor's worst sin in this whole process is her straightforward observation that our life experiences shape who we are and what we do. This is not a new idea. Mr. President, 175 years ago, on the first page and at the most famous treatise in American law, Oliver Wendell Holmes wrote:

The life of the law has not been logic; it has been experience.

This isn't just an old idea either. Justices Alito, Scalia, and Thomas each acknowledged in their own confirmation hearings that their own life experiences—being born into an immigrant family, an exposure to discrimination, a childhood in poverty—shaped their own approach to judging.

But Judge Sotomayor went beyond Justices Alito, Scalia, and Thomas by also recognizing that judges must be aware of these prejudices, and they must not allow these prejudices to impact their approach to a case.

Since this is a body that values its history, I thought it would be appropriate to close by mentioning the last nominee to the Supreme Court with a comparable amount of experience to Judge Sotomayor. That person is Benjamin Cardozo.

Judge Cardozo was nominated to the Supreme Court in 1932, after spending 18 years on his State's highest court. Like Judge Sotomayor, Judge Cardozo was from New York. Like Judge Sotomayor, he had a tough childhood, losing a parent when he was 9 years old. He had a tough childhood like her. Like Judge Sotomayor, Cardozo was from an ethnic minority—he was a Sephardic Jew, a descendant of Portuguese immigrants. Like Judge Sotomayor, Cardozo was rightly proud of his heritage. Like Judge Sotomayor, Cardozo was the most experienced nominee to the Supreme Court in his generation.

Yet, unlike Judge Sotomayor, Judge Cardozo did not attract so much controversy. In fact, he was unanimously confirmed to the Supreme Court in a voice vote that lasted all of 10 seconds.

Judge Sotomayor is one of the leading jurists of our Nation. If confirmed, she will be the only judge on the Supreme Court with trial court experience. She would be one of the only ones with experience as a prosecutor. As many have commented, she would be the appointee with the most Federal court experience in a century.

We have, right now, a chance to make history. Thankfully, unlike a lot of the important decisions we have to make that come before this body, this is an easy one to make.

Judge Sotomayor will not only be the first Latina on the Supreme Court; she will be the first person of Hispanic descent to reach the pinnacle of any one of the three branches of the Federal Government. She could not be more qualified for this position. Her appointment will help protect the individual rights and liberties that are so necessary for Minnesotans and for all Americans—and that this Supreme Court has steadily, and substantially, eroded.

I am honored to cast my vote in favor of Judge Sonia Sotomayor, and I hope my colleagues on both sides of the aisle will join me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, while this is my first opportunity to vote for a Supreme Court nominee named by a Democratic President, I don't view the confirmation of judges through a partisan lens. Instead of partisanship, I have developed several criteria for assessing Supreme Court nominations. I believe these criteria are straightforward, and they are easy to understand:

Does the nominee have extensive experience with the law and a judicial temperament?

Has the nominee demonstrated sharp legal intelligence and sound judgment?

Does the individual display a judicial philosophy that falls within the mainstream of American legal thought?

Is he or she able and willing to separate their personal beliefs from their constitutional obligations?

On each count, I rule in favor of Judge Sotomayor.

My colleagues and I have all been listening carefully to Judge Sotomayor's testimony, and we have reviewed her record. In that record, everything I have been able to ascertain indicates that Justice Sotomayor will look a lot like Judge Sotomayor—an exemplary arbiter of the law, firm but practical, tough but fair.

For these reasons, I will cast my vote to confirm her as the next Associate Justice of the Supreme Court.

I speak from, perhaps, a unique position among Senators. I may be the shortest serving Senator in the history on our Senate Judiciary Committee. At the beginning of the 111th Congress, Senator REID asked me to serve on this extraordinarily important committee. Senator REID told me it would be a

temporary assignment, but I was still on the committee when Judge Sotomayor was nominated to the Supreme Court. I very much enjoyed my meeting with Judge Sotomayor, and I told her I wasn't sure how long I would be serving on the committee. I said I felt a little bit like a snowflake with the prospect of an Oregon rain coming in the afternoon. In fact, the rain came just a few days before the Judiciary Committee began the confirmation hearing for Judge Sotomayor. I did get a chance to talk with her and discuss, at some length, her views with respect to the key issues surrounding how a Senator evaluates a nominee to the Supreme Court.

On the basis of that discussion and a review of her record, while I wasn't able to cast a vote for her in committee, it is going to be, later this week, an honor for me to vote for her on the Senate floor.

When I met with Judge Sotomayor, we discussed a number of important issues—particularly matters relating to national security, the power of the Commander in Chief, and we also spent some time on a matter that I know the occupant of the chair is most interested in and that is end-of-life health care. What struck me the most about Judge Sotomayor was her openness, her intellectual curiosity, and her desire to make sure she had all the facts, all the information, all the views and background and the reading material that you have to have when you are going to make a call not on the basis of your predisposition but on the basis of the law and the law as it is applied to the facts.

In a number of areas we discussed with respect to end of life, Judge Sotomayor acknowledged that these were issues she hadn't personally considered. The occupant of the chair and I have talked at some length about the politicized case of the late Terri Schiavo. I objected on the floor of the Senate to the Senate considering that matter.

Of course, Judge Sotomayor could not go into how she would rule on end-of-life cases. But we talked at some length about those issues, and I am going to discuss them later in this statement tonight.

I wish to start my comments by saying I believe, with the young people at home in Oregon, this nomination by President Obama is regarded as an inspiration and a remarkable personal story. Oregonians have told me they look at her journey as the realization of the American dream. Oregonians have followed her testimony before the Senate Judiciary Committee. They believe she is qualified for this job. They are very excited about the fact that this nomination makes history, and I commend the President for demonstrating with this nomination how it is possible to increase the diversity, talent, and experience on the Supreme Court with one very capable individual.

Chairman LEAHY and others have done an excellent job of going through

the judge's impressive background. I do want to spend some time talking about the issues that Judge Sotomayor and I discussed in my office most extensively—Presidential power and end of life.

Serving on the Senate Select Committee on Intelligence, I have followed the history with respect to a President's Commander in Chief authority. Disagreements about this authority and how it is applied are certainly nothing new. There have been vigorous debates about this issue since our country was founded. But over the past several years, there has been especially heated debate around these questions and, in particular, the issue of whether, during times of war, the President has the authority to ignore laws passed by the Congress. As a result, there have been several occasions, over the past few years, where the Supreme Court has had to rule on major national security issues and address this question directly.

Our Court has frequently been sharply divided on this issue. At the same time, it has consistently ruled that—in Justice Sandra Day O'Connor's words—"a state of war is not a blank check for the President." I believe this is a principle that has to be upheld.

When I raised these issues with Judge Sotomayor, I was impressed with her thoughtfulness, her knowledge, and the experience she discussed about dealing with these thorny issues. Her answers made me believe that, as a Supreme Court Justice, she would apply the Constitution in a way that struck a balance—a very careful balance—between protecting our collective security and protecting our individual liberty.

We have always had, in the national security area, something of a constitutional teeter-totter, where the Founding Fathers always sought to try to ensure that there was an appropriate balance between protecting our Nation and securing our individual liberties; and maintaining that balance is what the Founding Fathers saw as paramount.

While Judge Sotomayor certainly gave no inkling to me in our discussion about national security how she might rule in a particular case, I felt very strongly that she would be able to define the reach of the Commander in Chief's power so as to strike that appropriate balance between collective security and individual liberty.

I must say, I don't want judges who will defer to any one President. I want judges who are going to defer to the Constitution. I believe Judge Sotomayor will do that in her service on the U.S. Supreme Court.

As I mentioned, I discussed with the judge the matter of end-of-life health care. This is a very sensitive issue for millions of Americans. What was striking about this in our discussions, when she and I met, is she recognized it was a contentious area of the law—one that deals with the rights of individuals and

family members; and she certainly indicated she was going to spend a lot of time trying to learn about the history of cases in this area and the Court's judgments on end-of-life care.

I have been very interested particularly in Justice Brandeis's dissent in the *Olmstead* case. This was a 1928 case. The Supreme Court later adopted Justice Brandeis's view in the *Katz* case which essentially made it clear there is a right to be left alone, a right to be respected in these very delicate questions.

What concerned me so much about the *Terry Schiavo* case—and again, Judge Sotomayor gave no inkling about how she would rule on an end-of-life case—I think she understood my concern, and would follow up on it, that we cannot have elected officials, and particularly the Senate, become something of a medical court of appeals where the Senate essentially appoints itself the arbiter of these very difficult tragedies.

Judge Sotomayor did not commit herself to any specific position on end-of-life issues or any of the other issues. And, in fact, the judge said that coming from New York where they have a very sophisticated set of laws and legal protections to empower the individual to make their own choices—not government—empower the individual to make these very difficult questions, the judge said because New York had those statutes empowering individuals that she would spend time looking at the laws and the decisions of the Supreme Court in this area, reflecting, again, her commitment to follow the facts, follow the law, and not bring any predisposition of one sort or another to a very difficult and contentious area of the law, one that is as sure as night follows the day is going to be before the Supreme Court again—the matter of end-of-life health care.

Let me also mention one of our colleagues talked about her respect for precedent. I asked her about a woman's right to choose. She said that is an area of the law that has been settled for decades.

On the second amendment, she indicated she would not try to eliminate the right to own guns for hunting or for personal protection, again, what amounts to a recognition of existing law.

On foreign law, she said she would not rely on international legal decisions to interpret the Constitution.

This is a nominee who is going to be very sensitive to following precedent, following the facts, and ensuring that those principles are what guide her service on the U.S. Supreme Court.

Before I close, I wish to submit a letter the Senate Judiciary Committee received in support of Judge Sotomayor from the Federal Bar Association. They passed a resolution in support of the judge's nomination. The Senate Judiciary Committee has also received statements of support from the Hispanic National Bar Association, from the past presidents of NHBA.

I ask unanimous consent to have printed in the RECORD the letter and resolution and statement of support.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUNE 1, 2009.

Re Nomination of Judge Sonia Sotomayor to the United States Supreme Court.

Hon. PATRICK J. LEAHY,

*Chairman, Committee on the Judiciary, U.S. Senate, Washington DC.*

DEAR CHAIRMAN LEAHY: On May 26, 2009, President Barack Obama nominated Judge Sonia Sotomayor to fill the vacancy left by Justice David H. Souter in the United States Supreme Court.

The Hon. Raymond L. Acosta Puerto Rico Chapter of the Federal Bar Association has issued the enclosed resolution supporting Judge Sotomayors nomination and endorsing her as qualified in every respect to fill this important position.

In sharing our background, please, note that the Federal Bar Association is a professional organization for private and government lawyers and judges that has been established for over 80 years with a membership of about 16,000 federal practitioners and over 900 members of the bench. The FBA is dedicated to the advancement of the science of jurisprudence and to promoting the welfare, interests, education and professional development of all attorneys involved in federal practice. The Hon. Raymond L. Acosta Puerto Rico Chapter is one of the largest and most distinguished chapters of the Federal Bar Association.

We greatly appreciate your consideration of our resolution, and respectfully request that you include it in the candidate's Senate Judiciary Committee evaluation file.

Respectfully,

KATHERINE GONZÁLEZ-VALENTIN,  
*President.*

RESOLUTION OF THE BOARD OF DIRECTORS ON  
PRESIDENT BARACK OBAMA'S NOMINEE FOR  
THE CURRENT JUDICIAL VACANCY IN THE  
UNITED STATES SUPREME COURT

Whereas on May 26, 2009, President Barack Obama nominated Judge Sonia Sotomayor to fill the vacancy left by Justice David H. Souter in the United States Supreme Court;

Whereas Judge Sotomayor has received widespread support, and in view of this Chapter, is an exceptionally qualified federal jurist with a stellar record of professional achievement;

Whereas the Board of Directors of this Chapter is convinced that the nominee will administer justice fairly and impartially, and will faithfully and impartially discharge and perform all the duties incumbent upon her under the Constitution and laws of the United States; and further, will support and defend the Constitution of the United States against all enemies, foreign and domestic, and will bear true allegiance to our Constitution and laws;

Whereas this Board of Directors is fully satisfied that Judge Sotomayor possesses the necessary professional skills, temperament, and other qualifications that are required to perform this important judicial role with distinction;

Now, therefore, the Board of Directors of the Federal Bar Association, Hon. Raymond L. Acosta Puerto Rico Chapter, hereby unanimously resolves:

1. To express its unconditional satisfaction with the qualifications of Judge Sonia Sotomayor to fill the vacancy in the United States Supreme Court, and the Chapters unconditional support of this important nomination;

2. To exhort the United States Senate and Its Committee on the Judiciary to expeditiously consider and favorably act on Judge Sonia Sotomayor's nomination, so that the United States Supreme Court may have a full complement of Justices by the time the Supreme Court reconvenes on October 5, 2009.

In San Juan, Puerto Rico, this 29th day of May, 2009.

HISPANIC NATIONAL BAR ASSOCIATION,

JULY 8, 2009.

HNBA ANNOUNCES ENDORSEMENT OF THE  
HONORABLE SONIA SOTOMAYOR

WASHINGTON, DC.—The Hispanic National Bar Association (HNBA) announced today that it has formally endorsed The Honorable Sonia M. Sotomayor to serve as Associate Justice of the Supreme Court of the United States. The HNBA's Special Committee on the U.S. Supreme Court has concluded its most recent review of Judge Sotomayor's qualifications and overall record, and found her to be 'extraordinarily well-qualified' to serve on the Nation's highest court. According to Ramona E. Romero, HNBA National President, "the HNBA unanimously endorsed Judge Sotomayor after reviewing her judicial record, professional competence, intellect, character, reputation for integrity, temperament, commitment to equal justice and record of service to the American public and the Hispanic community." Carlos Ortiz, who co-chairs the HNBA's Supreme Court Committee, added that "based on our review, we are certain that she is extraordinary well-equipped to serve on our country's high court. We believe that she embodies all the qualities required for service as a Justice, and are confident that, when confirmed, she will render fair and impartial justice for all Americans. We recommend her without any reservation."

This is the HNBA's fourth review of Judge Sotomayor's record. The HNBA conducted due diligence before including Judge Sotomayor on a short list of potential Hispanic American nominees for the U.S. Supreme Court released in 2005. Her credentials were also reviewed by the HNBA prior to her elevation to the Second Circuit in 1998, and when she was nominated for the U.S. District Court. "In each instance, we have been impressed by her intellect, her commitment to the rule of law and equal justice, her experience, and her respect for all who interact with the legal system," said Ms. Romero. Since the nomination of Judge Sotomayor to the U.S. Supreme Court in late May, the HNBA has met with members of the Senate Judiciary Committee and their staff to advocate for a fair and expeditious confirmation hearing. The HNBA looks forward to the opportunity to reiterate its strong support for Judge Sotomayor during the confirmation process.

The HNBA Supreme Court Committee is co-chaired by Robert Raben, founder and President of The Raben Group. Its members are Michael A. Olivas, Houston, TX; HNBA Law Professor Sect Chair Emeritus, 1987-2009; Gilbert F. Casellas, Round Rock, TX; HNBA Past President, 1984-1985; Mark S. Gallegos, Miami, FL; HNBA Past President, 1988-1989; Dolores S. Atencio, Denver, CO; HNBA Past President, 1991-1992; Mary T. Hernandez, San Jose, CA; HNBA Past President, 1994-1995; Gregory A. Vega, San Diego, CA; HNBA Past President, 1997-1998; Lillian R. Apodaca, Albuquerque, NM; HNBA Past President, 1998-1999.

The Hispanic National Bar Association (HNBA) is an incorporated, not-for-profit, national membership Association that represents the interests of the more than 100,000 attorneys, judges, law professors, legal assistants, and law students of Hispanic de-

scend in the United States, its territories and Puerto Rico. For more information about the HNBA, please visit [www.hnba.com](http://www.hnba.com).

HNBA PRESIDENTS' STATEMENT

We the undersigned past presidents of the Hispanic National Bar Association wholeheartedly support the nomination of Judge Sonia Sotomayor to serve as an Associate Justice on the United States Supreme Court. Judge Sotomayor has exceptional academic and professional credentials. She is a summa cum laude graduate of Princeton University and graduated from Yale Law School, where she served as an editor of the Yale Law Journal. Before her appointment to the federal bench, Judge Sotomayor was a prosecutor for five years in the Manhattan District Attorney's Office and then a commercial litigator in a private law firm. Judge Sotomayor has been a federal judge for 17 years, serving with distinction on both the U.S. District Court for the Southern District of New York and the Second Circuit Court of Appeals.

We have all long been troubled by the fact that no person of Hispanic heritage has ever served on our nation's highest court. During our terms as HNBA President, each and every one of us engaged in bipartisan efforts to diversify the federal bench and to build a pipeline of qualified Latino lawyers, jurists and legal scholars who would be prepared to serve on the U.S. Supreme Court with distinction. We have always been convinced that greater diversity on the Supreme Court would broaden and strengthen the perspective of its jurisprudence and enhance the administration of justice for all Americans. Words cannot adequately express the delight in our hearts that our time has finally arrived. We urge the U.S. Senate to confirm an exceptional jurist with extraordinary federal judicial and legal experience, Judge Sonia Sotomayor.

Mario G. Obledo, John R. Castillo, Lorenzo Arredondo, Gilbert F. Casellas, William Mendez, Jr., Mark S. Gallegos, Robert J. Ruiz, Carlos G. Ortiz, Benjamin Aranda III, Robert M. Maes, Mari Carmen Aponte, Robert G. Mendez, Michael N. Martinez, Jimmy Gurule, Dolores Atencio, Wilfredo Caraballo, Mary T. Hernandez, Hugo Chaviano, Lillian G. Apodaca, Rafael A. Santiago, Duard M. Bradshaw, Alan Varela, Jimmie V. Reyna, Jose Gaitan, Gregory A. Vega, Alice Velazquez, Angel G. Gomez, Carlos Singh, Nelson A. Castillo, Victor Marquez.

Mr. WYDEN. Mr. President, this organization, the Hispanic National Bar Association is not for profit, a national membership association that represents the interests of more than 100,000 attorneys, judges, law professors, legal assistants, and law students of Hispanic descent in United States, its territories, and Puerto Rico.

After a review of her qualifications and overall record, the Hispanic National Bar Association's Special Committee on the U.S. Supreme Court concluded that Judge Sotomayor is extraordinarily well qualified to serve on the Nation's highest Court.

Let me close simply by saying that when we have to review a nominee for this extraordinarily important position, one of the most important measures for me is to know that the nominee's views are squarely in the mainstream of American jurisprudence.

I came away believing that, but I hope that the Senate will not take my word for it or any other colleague's word for it. I think we ought to reflect on what the American Bar Association said. They gave her their highest rating. Or listen to former FBI Director Louis Freeh who called her an "outstanding judge." Or read the dozens of endorsements for her, including those from the American Hunters & Shooters Association, the Chamber of Commerce, and the National Association of Women Lawyers.

I started my statement tonight by laying out the criteria that I believe ought to be used in evaluating a Supreme Court nominee. In terms of those criteria, Judge Sotomayor is an individual who will bring great credit to the Supreme Court. She will be a role model for millions and millions of young people in our country. I hope our colleagues will vote in a resounding fashion in favor of her nomination to serve on the U.S. Supreme Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Mr. President, I, too, rise in strong support of the President's historic nomination of Judge Sonia Sotomayor to be Associate Justice of the U.S. Supreme Court.

The Senate has no more important responsibility than to advise and consent on nominations to our Nation's highest Court. It will be an honor, on behalf of the people of my State, to cast my vote to confirm Sonia Sotomayor.

Judge Sotomayor is a distinguished lawyer with a lifetime of experience in and out of the courtroom, as a litigator, a prosecutor, a trial judge, and an appellate judge on one of the most prestigious courts in the Nation.

At an early point in her career, she showed a dedication to public service, serving 5 years as an assistant district attorney in New York City. As a prosecutor, she focused on murder and robbery cases at a time when violence was high in New York and law and order was essential. And she has chosen in recent years to share her knowledge and experience with young legal scholars as an adjunct professor at local law schools.

Three Presidents from both parties have also agreed she merits a prestigious lifetime judicial appointment. That is impressive bipartisan support at our Nation's highest levels.

The question before the Senate is whether the nominee meets the high standards we rightfully expect of our Supreme Court Justices. It is our role to advise and consent on whether a President's nominee seeks to apply the law and not to make or remake it. On both of these fronts, Judge Sotomayor meets and far exceeds the mark. She is clearly a judicial moderate and has demonstrated this through a Federal judicial record longer than any nominee in the last 100 years.

As Federal district court judge in the Southern District of New York, Judge

Sotomayor presided over roughly 450 cases. As a member of the Second Circuit Court of Appeals, Judge Sotomayor has participated in over 3,000 panel decisions and authored over 400 published opinions.

Seldom does the Senate have a record as long as Judge Sotomayor's. There is no mystery here about what kind of Justice she will be.

Since joining the second circuit, she has participated in 434 published panel decisions where the panel included at least one judge appointed by a Republican President. In these cases, Judge Sotomayor agreed with the result favored by the Republican appointee 95 percent of the time. She has ruled for the government in 83 percent of immigration cases, and 92 percent of criminal cases. She has hewed closely to second circuit precedent. On employment cases, she has split her decisions evenly. By all accounts, she is a mainstream moderate nominee.

The American Bar Association unanimously found her well qualified. She is someone with a long record of moderation and humility toward the law. Her work is driven by a thorough application of the law to the facts of each case. Our focus and the basis for support or opposition should be on her qualifications and record. And on this point, she clearly should be confirmed.

This week, we have a historic opportunity to add a mainstream, moderate judge to our Nation's highest Court. President George H. W. Bush saw this kind of potential in her when he nominated her to the Federal district court, and she has fully realized his faith in her, so much so that she stands on the brink of history after being nominated by President Obama.

Judge Sotomayor has all the professional ingredients to make a great Supreme Court Justice. It is on that basis she should be confirmed by this body by an overwhelming vote.

But there is more to Judge Sotomayor than this impressive legal career. Judge Sotomayor has also lived a truly American story. The daughter of Puerto Rican parents, Judge Sotomayor lost her father at the age of 9 and was raised in a housing project in the Bronx. Through strong-willed parenting by her mother, she rose from difficult circumstances to receive the very highest honor that Princeton awards to an undergrad. She also went to Yale Law School where she had a much more distinguished career than my own.

When she is confirmed as the first Hispanic and third woman ever to be nominated to the Supreme Court, Judge Sotomayor will be an inspirational example to all children all across the country, telling us that regardless of where you come from, regardless of your economic circumstances, nothing is beyond your reach in America.

Judge Sotomayor will be a role model for young Coloradans in all of our schools, and with her on the high

Court, I fully expect that school-age girls, such as my three daughters, will have an important role model of success to follow in their own lives.

These intangible factors make her nomination an important statement for millions of young Americans setting out on their own paths.

I have the utmost faith in Sonia Sotomayor. The President made an excellent nomination. Through sheer persistence, hard work, intelligence, and integrity, she has become an inspiration to the American people, and she is a compelling reminder that in this Nation, everything is possible.

I am proud to commit my vote in favor of this nominee.

Mr. LEAHY. Mr. President, many independent studies that have closely examined Judge Sotomayor's record have concluded that hers is a record of applying the law, not bias. For example, the American Bar Association's Standing Committee on the Federal Judiciary unanimously found Judge Sotomayor to be "well qualified"—its highest rating—after conducting a thorough evaluation that included an examination of her integrity and freedom from bias. The Chair of the Standing Committee testified, "the committee unanimously found an absence of any bias in the nominee's extensive work," and described Judge Sotomayor's opinions as "show[ing] an adherence to precedent and an absence of attempts to set policy based on the judge's personal views."

Numerous other studies from groups such as the Congressional Research Service, the New York City Bar Association, the Transactional Records Access Clearinghouse, the National Association of Women Lawyers, and the nonpartisan Brennan Center for Justice, have reached similar conclusions. These studies were entered into the record during Judge Sotomayor's confirmation hearings. Nothing in these studies or in her 17 year record on the bench raises a concern that Judge Sotomayor would substitute feelings for the command of the law.

Judge Sotomayor's critics attack her by pretending that President Obama does not respect the Constitution and the rule of law. They are wrong. They attack him for using the word empathy to describe one of the qualities he is looking for in a judicial nominee. He has never said that empathy is intended to override the rule of law. It is, nonetheless, ironic that the Senate Republican leader has criticized Judge Sotomayor for not being more empathetic and ruling for Frank Ricci, Ben Vargas, and the other plaintiffs despite the well-settled law in the Second Circuit which she applied in that case.

They attack her by misconstruing what empathy means. Empathy is understanding and awareness. That is what Justice Alito was testifying about at his confirmation hearing. That is what Justice Thomas was testifying about when he said that what he would bring to the Supreme Court "is

an understanding and the ability to stand in the shoes of other people across a broad spectrum of this country." Justice Alito and Justice Thomas were not testifying that they would be biased. What the partisan critics do not appreciate is that the opposite of empathy is indifference and a lack of understanding. Empathy does not mean biased or mean picking one side over another, it means understanding both sides.

When she was designated by the President, Judge Sotomayor said: "The wealth of experiences, personal and professional, have helped me appreciate the variety of perspectives that present themselves in every case that I hear. It has helped me to understand, respect, and respond to the concerns and arguments of all litigants who appear before me, as well as to the views of my colleagues on the bench. I strive never to forget the real-world consequences of my decisions on individuals, businesses, and government."

It took a Supreme Court that understood the real world to see that the seeming fair-sounding doctrine of "separate but equal" was a straightjacket of inequality. We do not need more conservative activists second guessing Congress and who through judicial extremism override congressional judgments intended to protect Americans' voting rights, privacy rights and access to health care and education.

In her widely misconstrued speech at the University of California at Berkeley, Judge Sotomayor said: "[J]udges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law." That parallels what Chief Justice Roberts said at his confirmation hearing when he testified about "the ideal in the American justice system" and judges "doing their best to interpret the law, to interpret the Constitution, according to the rule of law" and not substituting their own personal agenda.

Those who spent days asking Judge Sotomayor to explain what she meant in a partial quotation from that speech about the decisions reached by a "wise Latina woman with the richness of her experiences" miss that she begins that statement with the words, "I would hope." They miss that her statement is aspirational. She would "hope" that she and the other Hispanic women judges would be "wise" in their decisionmaking and that their experiences would help inform them and help provide that wisdom. Judge Sotomayor's critics have ignored her modesty in not claiming to be perfect, but rather in aspiring to the greatest wisdom and fairness she can achieve.

These critics also miss that Judge Sotomayor was pointing out a path to greater fairness and fidelity to law by acknowledging that despite the aspiration she shares with other judges, there are imperfections of human judging. By acknowledging rather than ignoring

that while all judges seek to set aside their personal views, they do not always succeed, and we can be on guard against those views influencing judicial outcomes.

Judge Sotomayor has described herself as "an ordinary person who has been blessed with extraordinary opportunities and experiences." In her opening statement at her Supreme Court confirmation hearing she spoke about witnessing the "human consequences" of judicial decisions. She testified that her judicial decisions "have not been made to serve the interests of any one litigant, but always to serve the large interest of impartial justice."

We have a long and important tradition in the law of seeking justice and fairness and equity. Judge Sotomayor spoke about the meaning of the word "justice" a decade ago and said: "Almost every person in our society is moved by that one word. It is a word embodied with a spirit that rings in the hearts of people. It is an elegant and beautiful word that moves people to believe that the law is something special."

In this country, the law is special, and it is special because of what it protects and what it can do. In England there were separate law courts and chancery courts. But, in the United States we have combined these functions to be performed by all of our Federal judges.

We all talk about the importance of judges following the law. Yet we should remember that the law that judges must follow includes the reconstruction amendments and particularly the 14th amendment, which transformed the rule of law and the role of judges and Congress in the United States. In the aftermath of the bloody, tragic Civil War, the 14th amendment was passed to give the courts and the Congress a more active role in defining and protecting civil rights. The complete abolition of slavery was only a part of its grand purpose. It was driven by a profound desire to arm the newly freed slaves—and all Americans—with the rule of law—set forth in the grand phrasing of the equal protection, due process, and privileges or immunities clauses—to guarantee their equal rights against invidious governmental discrimination.

The 14th amendment does not supplant but reinforces the historical equitable powers of our courts to redress problems. It is not just the statutes Congress writes, but also the precedent and interpretations of the courts that make up the law. We have a strong common law tradition in that regard. And we have a powerful equitable tradition that ensures that fairness and justice are done.

We need judges who appreciate when and how to use their equitable powers. Judges who follow the law are empowered to enjoin illegal behavior, as the Supreme Court did in its historic series of orders enjoining the States and others from segregating schools on the

basis of race. This does not mean that our courts have the power to remedy every problem in America. They do not. In addition, they can abuse their power, as I think the Supreme Court did when it intervened in the Presidential election in 2000 and determined its outcome. But, we should never forget that it is through its equitable powers that the Supreme Court and most other courts in this country are able to do justice and to ensure fairness and equity. In that regard, I believe that the experience and wisdom Judge Sotomayor has gained from an extraordinary life will benefit all Americans.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BEGICH). Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent to proceed to a period of morning business with Senators allowed to speak for up to 10 minutes each.

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

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

#### COMMENDING DR. RICHARD BAKER

• Mr. BYRD. Mr. President, the U.S. Senate is an institution that reveres precedent, continuity, and tradition. Ours is an institution that prides itself on the great men and women who preceded us in this Chamber, and the role this institution has played in protecting our Nation, and in making our Nation a better place in which to live, work, and raise families. This is an institution that prides itself on its history.

Therefore, it is important that the Senate have an official historian, along with an Historical Office to document our history, and supervise the management of the records of the Senate as an institution, of Senate committees, and of individual Senators.

For the past 34 years, the Senate has been fortunate, perhaps I should say we have been blessed, to have Dr. Richard Baker as the Senate Historian. Unfortunately for us, he is now leaving his position as Senate Historian, so I must say farewell.

This is a most reluctant and sad farewell. While I am pleased that Dr. Baker will now have the time and opportunity to pursue other endeavors, such as spending more time with his wife and other family members, as well as

completing some manuscripts he has been working on, I must say that I am truly sorry to see him leave.

In the preface of volume two of my four-volume history of the Senate, I pointed out that, "This work in its present form would not have been possible without the assistance of the professionals within the Senate historical office," which, of course, was headed by Dr. Baker. My little acknowledgment hardly begins to convey the debt of my gratitude to him for his assistance in that project.

Researching and writing that four-volume history took more than a decade, and during that 10-year period, whenever I went to him for assistance, whether for help in research or writing or just thinking about how I wanted to present a certain idea, he always went above and beyond the call of duty. He was always there, ready and eager to help. I will never forget how, time after time, he would simply say, "Senator, I'll be delighted to help."

He was always ready to help, although he was responsible to 99 other Senators, and had so many other responsibilities and functions. Since the office was created in 1975, following the Watergate scandal, Dr. Baker, the Senate's first and only historian, has ensured that the history of the Senate is properly collected, categorized, maintained, and preserved. In addition, he has advised Senators on how to manage their personal papers while they are here, and how to preserve them once they leave office, and has advised Senate committees on the transfer of their records to the National Archives.

Charged with maintaining an objective and thorough record of the institution, his office has collected information on important Senate events, and traced the background and the evolution of Senate rules, precedents and countless activities.

In a multitude of ways, through the publications that his office issues, in talks with Senators and our staffs, and in private consultations, Dr. Baker has provided Senators with a better understanding and appreciation of the U.S. Senate, and its importance and its role under the Constitution. His office has reminded us on a daily basis of the majesty, the uniqueness, and the greatness of our institution.

His office has undertaken its very important work objectively and without political motivation or slant. It always remained a completely non-partisan office. As a result, Dr. Baker earned the respect as well as the gratitude of Senators on both sides of the aisle. This explains why, even with the many changes in the Senate during his tenure as Senate Historian, including changes in Senate leaders and party control, no one has even considered

any change in the Senate Historical Office.

Because of his careful and methodical work in collecting the history of the Senate, I can safely predict that the work of his office will be vital to future historians. Years from now, when most of us are long gone—from the Senate, that is—historians will be using the records his office has compiled and the documents his office has produced, to write their histories of the Senate—and for that we will all be grateful.

I congratulate and I thank Dr. Baker for the marvelous work he has done. I wish him and his lovely wife Pat nothing but much happiness, great success, and the best of health as they embark on the next phase of their lives.●

#### BUDGET SCOREKEEPING REPORT

Mr. CONRAD. Mr. President, I wish to submit to the Senate the second budget scorekeeping reports for the 2010 budget resolution. The reports, which cover fiscal years 2009 and 2010, were prepared by the Congressional Budget Office pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended.

The reports show the effects of congressional action through July 31, 2009, and include the effects of legislation since I filed my last reports on June 25, 2009. The new legislation includes P.L. 111-42, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes; H.R. 3114, an act to authorize the Director of the U.S. Patent and Trademark Office to use funds made available under the Trademark Act of 1946 for patent operations in order to avoid furloughs and reductions-in-force, and for other purposes, pending Presidential action; S. 1107, the Judicial Survivors Protection Act of 2009, pending Presidential action; and H.R. 3357, an act to restore sums to the highway trust fund, and for other purposes, pending Presidential action. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of S. Con. Res. 13, the 2010 budget resolution.

For 2009, the estimates show that current level spending is \$982 million below the level provided for in the budget resolution for budget authority and \$3.8 billion above it for outlays while current level revenues match the budget resolution level. For 2010, the estimates show that current level spending is \$1,205.9 billion below the level provided for in the budget resolution for budget authority and \$715.8 bil-

lion below it for outlays while current level revenues are \$19.2 billion above the budget resolution level.

I ask unanimous consent to have the letters and accompanying tables from CBO printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, August 4, 2009.

Hon. KENT CONRAD,  
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed report shows the effects of Congressional action on the fiscal year 2009 budget and is current through July 31, 2009. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010, as approved by the Senate and the House of Representatives.

Pursuant to section 403 of S. Con. Res. 13, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the enclosed current level report excludes these amounts (see footnote 2 of Table 2 of the report).

Since my last letter dated June 25, 2009, the Congress has cleared for the President's signature the following acts, which affect budget authority and outlays for fiscal year 2009:

An act to authorize the Director of the United States Patent and Trademark Office to use funds . . . and for other purposes (H.R. 3114); and

An act to restore sums to the Highway Trust Fund, and for other purposes (H.R. 3357).

Sincerely,  
DOUGLAS W. ELMENDORF,  
Director.

Enclosure.

TABLE 1.—SENATE CURRENT LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2009, AS OF JULY 31, 2009

[In billions of dollars]

	Budget resolution <sup>1</sup>	Current level <sup>2</sup> Current	Current level over/under (—) resolution
<b>ON-BUDGET</b>			
Budget Authority .....	3,668.6	3,667.6	–1.0
Outlays .....	3,357.2	3,361.0	3.8
Revenues .....	1,532.6	1,532.6	0.0
<b>OFF-BUDGET</b>			
Social Security Outlays <sup>3</sup> .....	513.0	513.0	0.0
Social Security Revenues .....	653.1	653.1	0.0

<sup>1</sup> S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010, includes \$7.2 billion in budget authority and \$1.8 billion in outlays as a disaster allowance to recognize the potential cost of disasters; those funds will never be allocated to a committee. At the direction of the Senate Committee on the Budget, the budget resolution totals have been revised to exclude those amounts for purposes of enforcing current level.

<sup>2</sup> Current level is the estimated effect on revenues and spending of all legislation, excluding amounts designated as emergency requirements (see footnote 2 of table 2), that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations, even if the appropriations have not been made.

<sup>3</sup> Excludes administrative expenses of the Social Security Administration, which are off-budget, but are appropriated annually.

SOURCE: Congressional Budget Office.



TABLE 2.—SUPPORTING DETAIL FOR THE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2009, AS OF JULY 31, 2009

[In millions of dollars]

	Budget authority	Outlays	Revenues
Previously Enacted: <sup>1</sup>			
Revenues .....	n.a.	n.a.	1,532,571
Permanents and other spending legislation .....	2,186,897	2,119,086	n.a.
Appropriation legislation .....	2,031,683	1,851,797	n.a.
Offsetting receipts .....	—640,548	—640,548	n.a.
Total, Previously enacted .....	3,578,032	3,330,335	1,532,571
Enacted this session:			
Helping Families Save Their Homes Act of 2009 (P.L. 111–22) <sup>2</sup> .....	106	3,896	0
An act to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products . . . and for other purposes (P.L. 111–31) .....	11	2	8
Supplemental Appropriations Act, 2009 (P.L. 111–32) <sup>2</sup> .....	89,682	26,992	0
An act to make technical corrections to the Higher Education Act of 1965, and for other purposes (P.L. 111–39) .....	—187	—202	0
Total, enacted this session .....	89,612	30,688	8
Passed, pending signature:			
An act to authorize the Director of the United States Patent and Trademark Office to use funds . . . and for other purposes (H.R. 3114) .....	0	5	0
An act to restore sums to the Highway Trust Fund, and for other purposes (H.R. 3357) <sup>3</sup> .....	—40	—40	0
Total, passed, pending signature .....	—40	—35	0
Total Current Level <sup>2,3,4</sup> .....	3,667,604	3,360,988	1,532,579
Total Budget Resolution <sup>5</sup> .....	3,675,736	3,358,952	1,532,579
Adjustment to budget resolution for disaster allowance <sup>6</sup> .....	—7,150	—1,788	n.a.
Adjusted Budget Resolution .....	3,668,586	3,357,164	1,532,579
Current Level Over Budget Resolution .....	n.a.	3,824	n.a.
Current Level Under Budget Resolution .....	982	n.a.	0

<sup>1</sup> Includes the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111–3), the American Recovery and Reinvestment Act (ARRA) (P.L. 111–5), and the Omnibus Appropriations Act, 2009 (P.L. 111–8), which were enacted by the Congress during this session, before the adoption of S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010. Although the ARRA was designated as an emergency requirement, it is now included as part of the current level amounts.

<sup>2</sup> Pursuant to section 403 of S. Con. Res. 13, provisions designated as emergency requirements (and rescissions of provisions previously designated as emergency requirements) are exempt from enforcement of the budget resolution. The amounts so designated for fiscal year 2009, which are not included in the current level totals, are as follows:

	Budget authority	Outlays	Revenues
Helping Families Save Their Homes Act of 2009 (P.L. 111–22) .....	—630	—630	n.a.
Supplemental Appropriations Act, 2009 (P.L. 111–32) .....	16,169	3,530	n.a.
Total, amounts designated as emergency .....	15,539	2,900	n.a.

<sup>3</sup> Section 1 of H.R. 3357 appropriated \$7 billion to the Highway Trust Fund. The enactment of this legislation followed an announcement by the Secretary of Transportation on June 24, 2009, of an interim policy to slow down payments to states from the Highway Trust Fund. The Congressional Budget Office estimates that H.R. 3357 will reverse this policy and restore payments to states at levels already assumed in current level. Thus, enactment of section 1 results in no change to current level totals. Other provisions of the act will reduce budget authority and outlays by \$40 million in 2009.

<sup>4</sup> For purposes of enforcing section 311 of the Congressional Budget Act in the Senate, the budget resolution does not include budget authority, outlays, or revenues for off-budget amounts. As a result, current level excludes these items.

<sup>5</sup> Periodically, the Senate Committee on the Budget revises the totals in S. Con. Res. 13, pursuant to various provisions of the resolution:

	Budget authority	Outlays	Revenues
Original Budget Resolution Totals .....	3,675,927	3,356,270	1,532,571
Revisions:			
For the Supplemental Appropriations Act, 2009 (section 401(c)(4)) .....	—1,530	2,240	0
For an act to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products . . . and for other purposes (sections 311(a) and 307) .....	11	2	8
For further revisions to the Supplemental Appropriations Act, 2009 (section 401(c)(4)) .....	1,515	642	0
For an act to make technical corrections to the Higher Education Act of 1965, and for other purposes (section 303) .....	—187	—202	0

Revised Budget Resolution Totals .....

<sup>6</sup> S. Con. Res. 13 includes \$7,150 million in budget authority and \$1,788 million in outlays as a disaster allowance to recognize the potential cost of disasters; those funds will never be allocated to a committee. At the direction of the Senate Committee on the Budget, the budget resolution totals have been revised to exclude those amounts for purposes of enforcing current level.

SOURCE: Congressional Budget Office.

Note: n.a. = not applicable; P.L. = Public Law.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, August 4, 2009.

Hon. KENT CONRAD,  
Chairman, Committee on the Budget, U.S. Senate,  
Washington, DC.

DEAR MR. CHAIRMAN: The enclosed report shows the effects of Congressional action on the fiscal year 2010 budget and is current through July 31, 2009. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010, as approved by the Senate and the House of Representatives.

Pursuant to section 403 of S. Con. Res. 13, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the enclosed current level report excludes these amounts (see footnote 2 of Table 2 of the report).

Since my last letter, dated June 25, 2009, the Congress has cleared and the President

has signed a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes (Public Law 111–42), which affects revenues.

The Congress has also cleared for the President's signature, the following acts: An act to authorize the Director of the United States Patent and Trademark Office to use funds \* \* \* and for other purposes (H.R. 3114); and Judicial Survivors Protection Act of 2009 (S. 1107).

These acts affect budget authority and outlays.

Sincerely,

ROBERT A. SUNSHINE

(For Douglas W. Elmendorf, Director).

Enclosure.

TABLE 1.—SENATE CURRENT LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2010, AS OF JULY 31, 2009

[In billions of dollars]

	Budget resolution <sup>1</sup>	Current level <sup>2</sup>	Current level over/under (—) resolution
ON-BUDGET			
Budget Authority .....	2,882.1	1,676.2	—1,205.9
Outlays .....	2,999.1	2,283.3	—715.8
Revenues .....	1,653.7	1,672.9	19.2
OFF-BUDGET			
Social Security Outlays <sup>3</sup> .....	544.1	544.1	0.0
Social Security Revenues .....	668.2	668.2	0.0

<sup>1</sup> S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010, includes \$10.4 billion in budget authority and \$5.4 billion in outlays as a disaster allowance to recognize the potential cost of disasters; those funds will never be allocated to a committee. At the direction of the Senate Committee on the Budget, the budget resolution totals have been revised to exclude those amounts for purposes of enforcing current level.

<sup>2</sup> Current level is the estimated effect on revenues and spending of all legislation, excluding amounts designated as emergency requirements (see footnote 2 of table 2), that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations, even if the appropriations have not been made.

<sup>3</sup> Excludes administrative expenses of the Social Security Administration, which are off-budget, but are appropriated annually.

SOURCE: Congressional Budget Office.

TABLE 2.—SUPPORTING DETAIL FOR THE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2010, AS OF JULY 31, 2009

[In millions of dollars]

	Budget authority	Outlays	Revenues
Previously Enacted: <sup>1</sup>			
Revenues .....	n.a.	n.a.	1,665,986
Permanents and other spending legislation .....	1,637,423	1,621,675	n.a.

TABLE 2.—SUPPORTING DETAIL FOR THE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2010, AS OF JULY 31, 2009—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Appropriation legislation .....	0	600,500	n.a.
Offsetting receipts .....	—690,251	—690,251	n.a.
Total, previously enacted .....	947,172	1,531,924	1,665,986
Enacted this session:			
Helping Families Save Their Homes Act of 2009 (P.L. 111–22) .....	318	11,346	0
An act to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products . . . and for other purposes (P.L. 111–31) .....	10	13	46
Supplemental Appropriations Act, 2009 (P.L. 111–32) <sup>2</sup> .....	11	33,530	0
An act to make technical corrections to the Higher Education Act of 1965, and for other purposes (P.L. 111–39) .....	32	36	0
A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes (P.L. 111–42) .....	0	0	6,862
Total, enacted this session .....	371	44,925	6,908
Passed, pending signature:			
An act to authorize the Director of the United States Patent and Trademark Office to use funds . . . and for other purposes (H.R. 3114) .....	0	65	0
Judicial Survivors Protection Act of 2009 (S. 1107) .....	—1	—1	0
Total, passed, pending signature .....	—1	64	0
Entitlements and mandates:			
Budget resolution estimates of appropriated entitlements and other mandatory programs .....	728,688	706,384	0
Total Current Level <sup>2, 3, 4</sup> .....	1,676,230	2,283,297	1,672,894
Total Budget Resolution <sup>5</sup> .....	2,892,499	3,004,533	1,653,728
Adjustment to the budget resolution for disaster allowance <sup>6</sup> .....	—10,350	—5,448	n.a.
Adjusted Budget Resolution .....	2,882,149	2,999,085	1,653,728
Current Level Over Budget Resolution .....	n.a.	n.a.	19,166
Current Level Under Budget Resolution .....	1,205,919	715,788	n.a.

<sup>1</sup> Includes the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111–3), the American Recovery and Reinvestment Act (ARRA) (P.L. 111–5), and the Omnibus Appropriations Act, 2009 (P.L. 111–8), which were enacted by the Congress during this session, before the adoption of S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010. Although the ARRA was designated as an emergency requirement, it is now included as part of the current level amounts.

<sup>2</sup> Pursuant to section 403 of S. Con. Res. 13, provisions designated as emergency requirements (and rescissions of provisions previously designated as emergency requirements) are exempt from enforcement of the budget resolution. The amounts so designated for fiscal year 2010, which are not included in the current level totals, are as follows:

	Budget authority	Outlays	Revenues
Supplemental Appropriations Act, 2009 (P.L. 111–32) .....	17	7,064	—2

<sup>3</sup> For purposes of enforcing section 311 of the Congressional Budget Act in the Senate, the budget resolution does not include budget authority, outlays, or revenues for off-budget amounts. As a result, current level excludes these items.

<sup>4</sup> The scoring for H.R. 3357, an act to restore the Highway Trust Fund, and for other purposes, does not change current level totals. H.R. 3357 appropriated \$7 billion to the Highway Trust Fund. The enactment of this bill followed an announcement by the Secretary of Transportation on June 24, 2009, of an interim policy to slow down payments to states from the Highway Trust Fund. The Congressional Budget Office estimates that H.R. 3357 will reverse this policy and restore payments to states at levels already assumed in current level. Thus, no change is required.

<sup>5</sup> Periodically, the Senate Committee on the Budget revises the totals in S. Con. Res. 13, pursuant to various provisions of the resolution:

	Budget authority	Outlays	Revenues
Original Budget Resolution Totals .....	2,888,691	3,001,311	1,653,682
Revisions:			
For the Supplemental Appropriations Act, 2009 (section 401(c)(4)) .....	5	2,004	0
For an act to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products . . . and for other purposes (sections 311(a) and 307) .....	0	0	40
For the Congressional Budget Office's reestimate of the President's request for discretionary appropriations (section 401(c)(5)) .....	3,766	2,355	0
For further revisions to a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products . . . and for other purposes (sections 311(a) and 307) .....	10	13	6
For further revisions to the Supplemental Appropriations Act, 2009 (section 401(c)(4)) .....	6	—1,175	0
For an act to make technical corrections to the Higher Education Act of 1965, and for other purposes (section 303) .....	32	36	0
For further revisions to the Supplemental Appropriations Act, 2009 (section 401(c)(4)) .....	—11	—11	0
Revised Budget Resolution Totals .....	2,892,499	3,004,533	1,653,728

<sup>6</sup> S. Con. Res. 13 includes \$10,350 million in budget authority and \$5,448 million in outlays as a disaster allowance to recognize the potential cost of disasters; those funds will never be allocated to a committee. At the direction of the Senate Committee on the Budget, the budget resolution totals have been revised to exclude those amounts for purposes of enforcing current level.

SOURCE: Congressional Budget Office.

Note: n.a. = not applicable; P.L. = Public Law.

## MATERIAL SUPPORT AND TERRORISM BARS IN IMMIGRATION LAW

Mr. LEAHY. Mr. President, following the attacks of September 11, 2001, Congress made dramatic changes to our immigration laws that were intended to strengthen barriers to entry to the United States for those believed to be engaged in terrorist activity. This was a laudable goal, but as with so much of the Federal Government's response to the September 11 attacks, fear overtook reason and sound judgment. Rather than limit the scope of changes to the law, Congress passed vastly overbroad revisions to the definition of terrorist activity, resulting in harm to asylum seekers and refugees. As a result, many who deserve and are otherwise eligible for protection under our laws have suffered needlessly.

The post-September 11 changes to the law expanded bars to entry for those accused of providing “material support” to terrorist organizations, or who are believed to have engaged in “terrorist activity.” The new definition of terrorist organization was so broadly

written that an individual who was forced at gunpoint to provide medical or other assistance, no matter how slight, to any group of two or more people acting against the law of their country, are considered to have materially supported a terrorist organization. As a result, those who bravely fought repressive governments in their home countries, and those who joined the United States in opposing despots, can now be called terrorists and barred from protection in our Nation.

I have worked for years to restore common sense to the bars in our immigration laws that apply to material support for terrorism. Unfortunately, as a result of the previous administration's inaction, and slow progress within the new administration, these laws remain a stain on the reputation of the United States as a leader in the cause of human rights. The time to end the terrible consequences of these laws is long overdue.

I called upon the previous administration to exert leadership in solving the longstanding problems associated with these restrictions to admission to

the United States. I worked with Senator KYL to provide the Bush-Cheney administration with the authority to implement waivers so that those deserving of our protection were not wrongly denied sanctuary in the United States. Little was done with the authority we provided.

We can and must do better. Today I renew these calls for leadership in the new administration. I call on President Obama to take the steps necessary to implement the authority granted by Congress to protect bona fide refugees and asylees.

I recognize that the waiver authority Congress provided to the executive branch resulted in some positive changes in recent months. The executive branch is granting waivers to those whose “support” under the overly broad definition of terrorist organization was provided only under duress. Some others, whose support was provided to groups exempt from the definition of terrorist organization, are also being granted protection. But that is not enough. The third tier of the law's definition of terrorist organization

continues to ensnare those deserving of our protection who pose no legitimate threat to the United States. Currently, over 7,000 individuals who were granted refugee status or asylum, and who have since petitioned the Government for lawful permanent residence, are on hold and in legal limbo because the agency has not implemented the authority granted under law. These are individuals whom our Government has already screened and deemed eligible for protection under the same set of facts now being held against them to erroneously claim that they are threats to the United States.

And in some cases, these are people that bravely stood by the United States in Iraq and elsewhere. Saman Kareem Ahmad served as a translator for the U.S. Marines in Iraq. He came to the United States on a special visa, supported by the Marine captain with whom he served, and with commendations from GEN David Petraeus. But because he had served with the Kurdish democratic party in Iraq in opposing Saddam Hussein, Mr. Ahmad was initially denied a green card because he was deemed to have been part of a terrorist organization under the law's definition. It took press reporting and congressional oversight to resolve this injustice. Such a result is at odds with our values.

As the result of legislation Senator KYL and I sponsored, and which became law, the agency was directed to establish a process for exempting certain groups from the material support bars. In practice, an individual who is granted refugee status or asylum is eligible to later petition to adjust their status to lawful permanent residence. Yet, rather than apply the exemption authority granted under law, the agency appears to assume the terrorism bars apply in many of these cases, and then holds the cases until it determines whether the individual applicants are eligible for a waiver. This is not what Congress intended. A significant percentage of the more than 7,000 pending cases are petitions from refugees or asylees who were previously admitted to the United States. They are being penalized for actions that took place prior to their admission to the United States, often for activity that was not barred at the time, and which they disclosed prior to lawful admission to our nation. These individuals should be granted a presumption of admissibility, assuming no other factors of inadmissibility apply to their cases.

Equally troubling is the effect of agency inaction on individuals in removal proceedings. Asylum seekers in removal proceedings are not considered for a waiver of the terrorism-related bars unless and until a final order of removal is issued. This inefficient system forces asylum seekers to engage in a lengthy appeals process if they believe they have a valid claim for relief. Reviewing such cases for waivers at the early stages of removal proceedings will lead to more efficient operations

within the agency and the immigration courts. It will also save genuine asylum seekers from unnecessary anguish and enable them to more quickly integrate into American society.

I intend to work in earnest with the Obama administration to solve this problem once and for all. If the executive branch is unwilling or unable to make the needed administrative changes to policy, then I will introduce legislation once again. Should legislation be necessary, I expect the administration and the agencies to work with me in a constructive manner to restore common sense and fairness to our treatment of refugees and asylum seekers.

#### INTELLIGENCE INVESTIGATIONS

Mr. LIEBERMAN. Mr. President, it has now been nearly 8 years since our country was attacked on September 11, 2001, as 19 al-Qaida members hijacked four jet airplanes and crashed three of them into the World Trade Center and the Pentagon. The passengers on the fourth plane, Flight 93, learned of the other attacks, fought back against the hijackers, and heroically gave their lives to prevent that plane from reaching its target in Washington, DC. That target was probably this very building—the U.S. Capitol.

In the last 8 years, our homeland has not been attacked again. The reasons for this are many. We created a Department of Homeland Security, and we adopted reforms in our intelligence community recommended by the 9/11 Commission. We are now consistently connecting the intelligence dots that were not connected before 9/11. We have denied safe haven to terrorist organizations in Afghanistan, Iraq, and other countries around the world. And we have worked with our allies to prevent terrorist groups from gaining access to nuclear and radiological materials and to combat terrorist financing.

One of the most important reasons why we have not been attacked again in the last 8 years is the tireless work of the men and women who serve in our intelligence agencies. While the attacks of 9/11 have receded into the memory of many Americans, I assure my colleagues that is not the case for the intelligence community. They know that the threat of terrorism has not diminished and are working each day to detect and disrupt terrorist plots targeting America and our allies.

They know that the threats we face are ones that could imperil the lives of countless Americans. Just last year, the Commission on the Prevention of Weapons of Mass Destruction determined that it is “more likely than not” that a nuclear or biological weapon of mass destruction will be used against the United States in a terrorist attack within the next five years. Should a nuclear device detonate in an American city, it could instantly kill hundreds of thousands of people and render the city uninhabitable for years.

This is a devastating possibility that America faces every day and agents are working to prevent every second of every day.

For all of these reasons, I believe we have a responsibility to give our intelligence agencies and agents the resources and tools they need, as well as the respect and appreciation they have earned.

What we should not do is go backwards by investigating intelligence officials who served us on the front lines of this ongoing war on terrorism and acted within legal guidance they were given.

Attorney General Holder is still considering an investigation into CIA interrogators and contract employees. I fear that such an investigation could very well foster a climate of political recriminations and sap the morale of the intelligence community. Those near certain results would no doubt leave our country less safe.

President Obama had it right when he said that with regard to past behavior by the intelligence community, he is “more interested in looking forward . . . than looking backward.” Given the threats that we face as a nation, it is imperative that we follow the President's lead.

With regard to the treatment of detainees now in U.S. custody, the President has been clear. The Executive order he signed on January 22 of this past year requires that all detainees in U.S. custody “shall in all circumstances be treated humanely and shall not be subjected to violence to life and person” and that all interrogations carried out by the U.S. Government, whether by the military, the CIA, the FBI or any other government entity, shall comply with the Army Field Manual. The President's Executive order is consistent with the Detainee Treatment Act as well as the Convention Against Torture and Common Article 3 of the Geneva Conventions. Given that such policy changes have already been made, I can see no benefit from new investigations of intelligence officials, especially those who were doing what they thought was appropriate and necessary to keep us safe.

The 9/11 Commission did a positive and constructive investigation of past events that needed to be understood so that we did not repeat the mistakes that made that horrific day possible. The commission investigated the activities of agencies such as the CIA and FBI in the years and months prior to the attacks of 9/11, and was unsparing in pointing out where those agencies had missed opportunities to disrupt the plot. As a result of the commission's recommendations, we established the Director of National Intelligence and the National Counterterrorism Center, improved sharing of intelligence information, and strengthened our watchlisting and visa issuance systems. All of these initiatives make the United States safer today against the threat of terrorism.

A new investigation of interrogation procedures used on al-Qaida detainees would have no such benefits given that these procedures have now been changed. But an investigation into past practices could cause great harm.

An investigation could ruin careers of men and women who have sacrificed so much on our behalf and would have a chilling effect on intelligence efforts moving forward. The overhanging threat of investigations will force those in the intelligence services to be risk averse, which in turn would make us all less secure. In the war against an enemy that does not wear a uniform, that ruthlessly kills innocent civilians, that then hides among those very same civilians, and that uses our own freedoms to undermine and attack us, tough decisions under great pressure—life and death decisions—must be made by those whose job it is to protect our security and our freedom.

As CIA Director Leon Panetta recently wrote in the *Washington Post*:

The time has come for both Democrats and Republicans to take a deep breath and recognize the reality of what happened after September 11, 2001. The question is not the sincerity or the patriotism of those who were dealing with the aftermath of September 11. The country was frightened, and political leaders were trying to respond as best they could. Judgments were made. Some of them were wrong. But that should not taint those public servants who did their duty pursuant to the legal guidance provided.

As I said at the beginning, we must not take for granted the important fact that we have not been attacked on our homeland since September 11, 2001. That fact is not an accident nor is it just a product of good luck. It is mostly the result of the ceaseless efforts to protect our country by the brave men and women in our military, by all who work for civilian agencies involved in homeland security and counterterrorism, and last but not least, by the intelligence community. Those men and women are, as CIA Director Panetta pointed out, “truly America’s first line of defense.”

I urge the Attorney General not to go forward with the investigations being debated now. The collateral damage to America’s intelligence community could be severe and that is something no American should want.

#### SERVICE MEMBER BENEFITS EDUCATION

Mr. NELSON of Florida. Mr. President, I want to share a story I heard about retired MSG Michelle Fitz-Henry.

Michelle served our Nation for over 20 years. Her husband, Senior Chief Petty Officer Ted Fitz-Henry, was a Navy SEAL who served our Nation for 21 years.

Michelle told me that before her husband left home for the Middle East they went into the living room. He said to her, you know if anything happens to me, SBP is there for you.

When he said SBP, he was referring to the Survivor Benefit Plan, an annu-

ity that the Department of Defense (DOD) pays to survivors—the widows and orphans—of two groups of servicemembers.

The first group of survivors includes those who lost a loved one serving on active duty.

In 2001, Congress passed a law allowing active duty servicemembers who are not eligible for retirement to be included in the SBP program. The SBP program provides the survivors of these fallen heroes with a monthly payment based upon the age of the spouse and the year the servicemember entered the service.

This was the right thing to do. It showed the Nation’s gratitude for servicemembers’ sacrifice. If a servicemember dies on active duty because of a military-connected cause, the servicemember and his or her family are automatically enrolled in the SBP program.

There is a second group of survivors who can also enroll in the SBP program. A veteran who is classified as a retiree—someone who has served for at least 20 years—is eligible to enroll in the program. After they leave the service, retirees can contribute a portion of their retirement pay to SBP. This contribution entitles their survivors up to 55 percent of the retiree’s base retirement pay after his or her death.

Since 1972, retirees have paid into the program with a portion of their retirement income in order to improve their family’s financial security upon their death. Some retirees have paid into the program for over 30 years.

What Michelle and Ted did not know was that the SBP they thought they could count on—approximately \$1,200 per month—would be reduced, dollar-for-dollar, by another benefit from the Department of Veterans Affairs dependency and indemnity compensation, DIC, program.

DIC is a monthly benefit payment to the survivors of all servicemembers who have died from a service-connected condition. That includes both those who die on active duty and veterans whose deaths resulted from a service-related injury.

What many SBP participants and their future survivors do not know is that the SBP-DIC dollar-for-dollar offset can leave widows and orphans with up to \$1,200 less per month than they had expected to receive. When planning a family budget this unforeseen reduction can be devastating.

For example, if a widow’s husband served for over 20 years, retired, paid into the SBP program and then died of a service-connected disability, she may think that she is entitled to both the full SBP and DIC payments. However, if she planned to receive \$1,300 per month from SBP and \$1,200 per month from DIC, she could be surprised to learn that the dollar-for-dollar offset would reduce her \$1,300 SBP payment by the \$1,200 DIC payment and she would be left with DIC intact, but only \$100 in SBP per month.

As this body knows well, for 8 years I have fought to repeal the law that offsets the monetary payments between the SBP annuity and the DIC benefit. This body may recall that in 2005 we took a step in the right direction and passed by 92–6 an amendment to repeal the unjust SBP-DIC offset. In the 2008 Defense authorization, we cracked the door to eliminating the offset by getting a “special payment” of \$50 per month. This special payment, called the special survivor indemnity allowance, is received by the widows and orphans whose SBP payments are offset by the DIC they receive. This year, the Congress increased the special payment to \$310 per month, by 2017, for the widows and orphans impacted by the SBP-DIC offset. This increase came from savings found in the tobacco legislation, which became law on June 22, 2009.

Michelle allowed me to speak of her case, but she isn’t alone. When widows, veterans, and constituents speak to me in support of my efforts to repeal this offset, they often tell me that they did not know that the offset existed.

If Michelle and Ted, with 39 years of combined service upon his death, didn’t know about this offset then we have a bigger problem out there: the Services don’t adequately educate our servicemembers and their families about their benefits, especially the offsets to their benefits. This year, we will change that.

The amendment I filed to the fiscal year 2010 National Defense Authorization Act, Senate Amendment No. 1808 to S. 1390, will increase servicemembers’ and their families’ awareness of their service-related benefits during transitions and events in a servicemember’s career.

My amendment will require the Services to provide information to servicemembers and their families about their disability, death, education, and survivor benefits, including any offsets.

My amendment requires the Services to provide this information when a servicemember enters or leaves the service either through retirement or at the end of his or her service. The services must also provide information when a servicemember is classified as having a service-connected disability and is unfit to perform their duty.

We all believe it is important for servicemembers and their families to receive certain benefits because of their service to the Nation. It is my guess that we also believe that servicemembers and their families should know about those benefits. We sometimes take for granted that we’re doing enough, but I believe we can do more and benefits education is a small but important step toward taking better care of our people.

Now I want to be clear, the Services are making honorable efforts to educate our troops about their benefits, but we all agree that we can do better. I asked the Services about their procedures, and I was surprised that there

are few standards or requirements that compel the Services to educate servicemembers and their families about disability, death, education and survivor benefits. Thus, I believe that our joint approach with the Services will go a long way to bring uniformity of content and access to all servicemembers and their families.

So, after gathering the information, I spoke with the Pentagon about the changes I was proposing and the possibility that I would file legislation. The Department provided numerous improvements to the legislation, including additional requirements for more information to be provided to servicemembers and their families. I appreciate their engagement and their thoughtful responses. I think it made for a better bill and a better amendment.

Requiring benefits education about service-related benefits will help achieve the basic goal of raising awareness, not only about servicemembers' benefits, but also about the offsets to those benefits.

This legislation is another step in the right direction; another step toward raising awareness about the law that requires the unjust SBP-DIC offset.

However, as awareness is raised we must continue to work hard to enact a law that will repeal the unjust offset. Our servicemembers not only earned or purchased this annuity; they and their survivors rely on the government to provide them with accurate information and the benefits they expect and deserve. We must continue to right these wrongs.

#### SITUATION IN YEMEN

Mr. LEVIN. Mr. President, I would like to take a few moments to bring to the attention of my colleagues the burgeoning threat of a potential safe haven for extremists in Yemen. As I am sure is true of many of my colleagues, I continue to monitor the press reports surrounding the future of the Yemeni detainees currently being held at the Guantanamo Bay detention facility. However, what I believe too few people are following is the growing threat of Yemen becoming a failed state and potential safe haven for members of al-Qaida.

A recent New York Times article, "Some in [al] Qaeda Leave Pakistan for Somalia and Yemen," highlighted the growing concern within the U.S. Government about relocations of some al-Qaida operatives to Yemen. The Washington Institute for Near East Policy also highlighted the growing threat in Yemen in a recent paper, "Waning Vigilance: al Qaeda's Resurgence in Yemen," that discusses how the threat in Yemen has simmered in recent years and urgently needs the attention of policymakers. Mr. President, I will ask that the New York Times and Washington Institute for Near East Policy articles be printed in the RECORD following my comments.

To appreciate fully the concerns about Yemen's stability, it is important to recall the association of terrorist activities with Yemen. It is perhaps best known as the site of the U.S.S. *Cole* attack in October 2000. But Yemen is also one of the top sources of foreign fighters in Iraq and Afghanistan, the source of weapons trafficked into Gaza, and the country of origin of almost 100 of the remaining detainees at the Guantanamo Bay detention facility. It was also where many mujahedeen returned to after the Soviet withdrawal from Afghanistan and, often forgotten, it is the ancestral home of Osama bin Laden. Further, in 2008, the U.S. Embassy in the Yemeni capital of Sana'a was attacked twice—first by a mortar attack and the second time by highly trained terrorists using vehicle-borne improvised explosive devices, small arms, and suicide vests.

Director of National Intelligence Dennis Blair also highlighted the significance of the situation in Yemen earlier this year in testimony before the Senate Armed Services Committee. Director Blair testified that losses within al-Qaida's command structure since 2008 have been significant and that sustained pressure against al-Qaida in the Federally Administered Tribal Areas, FATA, of Pakistan may eventually force it to vacate the FATA. He stated that it is conceivable that al-Qaida could relocate to the gulf where it could exploit a weak central government and close proximity to established recruitment, fundraising, and facilitation networks.

Yemen is the type of country the Director is concerned about, and, for good reason. I would direct my colleagues to the most recent issue of Foreign Policy magazine, which ranks Yemen 18th on its failed states index, an annual index based on 12 indicators ranging from availability of public services to demographic pressures to refugee and internally displaced populations. The failed state index additionally says of Yemen: "a perfect storm of state failure is now brewing there: disappearing oil and water reserves; a mob of migrants, some allegedly with al Qaeda ties, flooding in from Somalia . . . ; and a weak government increasingly unable to keep things running."

The article goes on to suggest what many Yemen observers have been saying for years: "Yemen is the next Afghanistan: a global problem wrapped in a failed state." Report after report reaches the same conclusion about—Yemen—it is a failing state with all the makings of an extremist safe haven. I believe it is critical that we monitor this situation closely; fund developmental and counterterrorism assistance for the Government of Yemen at robust levels; and urge the Obama administration to engage actively with the Yemeni Government. The consequences of inaction can be seen right across the Gulf of Aden in Somalia.

For its part, the administration has increased its focus on this threat. Ear-

lier this year, Central Intelligence Agency, CIA, Deputy Director Stephen Kappes reportedly met with Yemeni President Ali Abdullah Saleh in Sana'a to discuss security and counterterrorism cooperation. This visit is one of many that the CIA and National Security Council officials have made in recent months, and in addition to a visit by General Petraeus shortly after taking command at U.S. Central Command.

All of these visits confirmed that the political landscape in Yemen remains fragile. Throughout his decades of rule, President Saleh has successfully balanced the various political forces in Yemen—tribes, political parties, military officials, political elites, and radical Islamists—to create a stable ruling coalition that has kept his regime intact. While in many cases this stability has been purchased via corruption and payoffs, in cases where groups and/or individuals have not been willing to join President Saleh, he has used law enforcement, military, and intelligence services to manage threats to stability. In recent years, al-Qaida has entered into the political landscape and complicated this delicate 30-year balance. President Saleh has addressed this situation by reportedly reaching understandings with al-Qaida that it would be left alone to recruit fighters if it did not attack the Yemeni Government.

In the Washington Institute for Near East Policy article I mentioned earlier, the author makes a number of points that underscore this delicate balancing act and the role of al-Qaida in the political landscape of Yemen. The author argues that the Yemeni Government is preoccupied, and its security services overtaxed by increasingly violent calls for secession from the south, threats of renewed fighting in the north, and a faltering economy that is dependent on revenue from rapidly dwindling petroleum reserves.

Between 2002 and 2004, the Yemeni Government, largely with U.S. assistance, was able to disrupt al-Qaida-inspired terrorist activity in Yemen. However, in recent years, a new generation of militants, with either experience in Iraq and Afghanistan or time spent in the Yemeni prison system, has emerged. This new generation of militants is inclined to target the Yemeni Government itself, in addition to foreign interests in Yemen.

The start of this resurgence was a 2006 jailbreak, in which 23 convicted terrorists escaped from a prison in the capital of Sana'a. Escapees from this jailbreak formed the core of a new group, al-Qaida in the Arabian Peninsula, AQAP, which is led by a 2006 escapee whose deputy is a former Guantanamo detainee. While many Yemen observers believe that AQAP is not yet strong enough to topple President Saleh's regime, it is capable of striking high value targets; contributing to instability across Yemen; and recruiting individuals to strengthen its ranks. The ideological demands of AQAP are

familiar: release militants from prison; end cooperation with the United States; renounce democracy; and implement a strict form of sharia law.

If al-Qaida operatives and their leadership in Pakistan look for a new home, Yemen will seem attractive. As in Afghanistan and Pakistan, it has large areas of naturally defensible land where President Saleh's regime has little authority; a robust tribal structure that could host relocating operatives; and a security infrastructure which lacks the capacity to defend Yemen's sovereign territory. It is also worth mentioning that these same tribes, in some cases, share the hard-line views of these relocating al-Qaida operatives and are inclined to help enlist their own family into AQAP's efforts. This reality only complicates further the work of President Saleh in balancing counterterrorism efforts and the survival of his regime.

In June 2007, al-Qaida officially announced its rebirth in Yemen with a suicide attack on a convoy of Spanish tourists. Since then, the organization has grown stronger and its attacks more frequent. In January 2008, it launched a series of attacks, culminating in the assault on the U.S. Embassy in September 2008. Earlier this year, a pair of suicide bombers targeted South Koreans, attacking first a group of tourists in the countryside and then the officials sent to investigate. Just last month, AQAP demonstrated that it is also adopting the kidnapping for ransom tactic, which has proven profitable for other terrorist groups. And, just last month, the Associated Press reported that security was upgraded in Yemen's capital after intelligence reports warned of attacks planned against the U.S. Embassy and other potential targets. In response, the Yemeni chief of intelligence has reportedly directed an increase in security around diplomatic missions in the capital and elsewhere in the country. The culmination of these developments gives the AQAP the ability to attract relocating foreign fighters and broaden its operational reach.

The United States is by no means the only player in the country. Saudi Arabia provides the most assistance to Yemen, some of it via official channels to the government and some portions of it unofficially. A myriad of countries are involved in the Yemeni energy sector, and Russia and China are the Yemeni Government's major arms suppliers. To complicate matters further, Yemen's tribal leaders, powerful within the Yemeni political landscape, are suspicious of U.S. policy in the region. These tribal leaders are often the proxies used by President Saleh, Saudi Arabia, and others interested in influencing the government and other elites.

Over the past several fiscal years, Yemen has received on average between \$20 and \$25 million annually in total U.S. foreign aid. For fiscal year 2009, the U.S. provided over \$40 million

in assistance for Yemen, an increase from its \$18 million aid package in fiscal year 2008. Between fiscal year 2006 and fiscal year 2007, Yemen also received approximately \$31.5 million from the U.S. Department of Defense's section 1206 account to train and equip Yemeni counterterrorism units. The Obama administration also recently sent to Congress a new package of 1206 funded projects, which includes \$65 million in counterterrorism assistance for various Yemeni military units. The recently passed fiscal year 2009 supplemental included \$10 million for the U.S. Agency for International Development to support U.S.-sponsored rural engagement measures, focused on civil affairs activities and civilian capacity building in the ungoverned regions of Yemen.

While these programs are important and need to be funded, Yemen observers have expressed frustration with how little "bang for the buck" the U.S. gets for its financial assistance to Yemen on counterterrorism operations. This is one area where I hope the administration will continue to press the Yemeni Government. In the past, the Yemeni Government has complained that the United States has provided them with insufficient assistance. However, based on the most recent administration efforts, the situation has clearly changed, and it is time for President Saleh's government to be more responsive. And, just as in Pakistan, it is critical that our government make two things very clear: first, we stand ready to assist in training and equipping counterterrorism forces; and second, the threats confronting Yemen are ultimately a threat to its own existence. American security assistance will ultimately only be as effective as the Yemeni Government's will to execute an aggressive counterterrorism and counter-recruitment mission.

To date, the administration has not officially characterized Yemen as an al-Qaida safe haven, but should President Saleh prove unwilling to confront adequately the threat posed by relocating foreign fighters; the growing threat of AQAP; and the sympathy of some tribal leaders in his country to support extremist elements, the administration should consider more vigorous action. While the U.S. Embassy in Sana'a is working hard to find an amenable resolution for the transfer of the Yemeni detainees at Guantanamo, it is also working on these very complex counterterrorism efforts. I would urge my colleagues to look at the threats emanating from Yemen and to support efforts by the administration to cooperate with the Yemeni Government and other regional actors, particularly Saudi Arabia, to address the burgeoning threat in the country.

Mr. President, I ask unanimous consent to have printed in the RECORD the New York Times and Washington Institute for Near East Policy articles to which I referred.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 12, 2009]  
SOME IN QAEDA LEAVE PAKISTAN FOR SOMALIA AND YEMEN

(By Eric Schmitt and David E. Sanger)

WASHINGTON.—American officials say they are seeing the first evidence that dozens of fighters with Al Qaeda, and a small handful of the terrorist group's leaders, are moving to Somalia and Yemen from their principal haven in Pakistan's tribal areas. In communications that are being watched carefully at the Pentagon, the White House and the Central Intelligence Agency, the terrorist groups in all three locations are now communicating more frequently, and apparently trying to coordinate their actions, the officials said.

Some aides to President Obama attribute the moves to pressure from intensified drone attacks against Qaeda operatives in Pakistan, after years of unsuccessful American efforts to dislodge the terrorist group from their haven there.

But there are other possible explanations. Chief among them is the growth of the jihadist campaigns in both Somalia and Yemen, which may now have some of the same appeal for militants that Iraq did after the American military invasion there in 2003.

Somalia is now a failed state that bears some resemblance to Afghanistan before the Sept. 11, 2001, attacks, while Yemen's weak government is ineffectually trying to combat the militants, American officials say.

The shift of fighters is still small, perhaps a few dozen, and there is no evidence that the top leaders—Osama bin Laden and Ayman al-Zawahiri—are considering a move from their refuge in the Pakistani tribal areas, according to more than half a dozen senior administration, military and counterterrorism officials interviewed in recent days.

Most officials would not comment on the record about the details of what they are seeing, because of the sensitivity of the intelligence information they are gathering.

Leon E. Panetta, the C.I.A. director, said in remarks here on Thursday that the United States must prevent Al Qaeda from creating a new sanctuary in Yemen or Somalia.

The steady trickle of fighters from Pakistan could worsen the chaos in Somalia, where an Islamic militant group, the Shabab, has attracted hundreds of foreign jihadists in its quest to topple the weak moderate Islamist government in Mogadishu. It could also swell the ranks of a growing menace in Yemen, where militants now control large areas of the country outside the capital.

"I am very worried about growing safe havens in both Somalia and Yemen, specifically because we have seen Al Qaeda leadership, some leaders, start to flow to Yemen," Adm. Mike Mullen, the chairman of the Joint Chiefs of Staff, said in remarks at the Brookings Institution here on May 18.

For the United States, the movement creates opportunities as well as risks. With the Obama administration focusing its fight against the Taliban and Al Qaeda on the havens in Afghanistan and Pakistan, a shift of fighters and some leaders to new locations could complicate American efforts to strike a lasting blow.

But in the tribal areas of Pakistan, Qaeda and Taliban forces have drawn for protection on Pashtun tribes with whom they have deep familial and tribal ties. A move away from those areas could expose Qaeda leaders to betrayal, while communications among militants in Pakistan, Somalia and Yemen have



created a new opportunity for American intelligence to zero in on insurgents who gave up many electronic communication devices shortly after the Sept. 11 attacks to avoid detection.

A senior Obama administration official attributed some of the movement to "the enormous heat we've been putting on the leadership and the mid-ranks" with Predator strikes, launched from both Pakistan and Afghanistan. Mr. Obama's strategy so far has been to intensify many of the strikes begun under the Bush administration.

"There are indications that some Al Qaeda terrorists are starting to see the tribal areas of Pakistan as a tough place to be," said an American counterterrorism official. "It is likely that a small number have left the region as a result. Among these individuals, some have probably ended up in Somalia and Yemen, among other places. The Al Qaeda terrorists who are leaving the tribal areas of Pakistan are predominantly foot soldiers."

Measuring the numbers of these movements is almost as difficult as assessing the motivations of those who are on their way out of the tribal areas.

But American officials say there is evidence of a shift. One senior American military official who follows Africa closely said that more than 100 foreign fighters had trained in terrorism camps in Somalia alone in the past few years. Another senior military officer said that Qaeda operatives and confederates in Pakistan, Yemen and Somalia had stepped up communications with one another.

"What really has us worried is that they're communicating with each other much more—Al Qaeda in Pakistan, Somalia and Yemen," the senior military officer said. "They're asking, 'What do you need? Financing? Fighters?'"

Mr. Obama's strategy for Afghanistan and Pakistan placed the defeat of Al Qaeda as the No. 1 objective, largely to make sure that the group could not plot new attacks against the United States.

Thus, the movement of the fighters, and the disruption that causes, has been interpreted by some of the president's top advisers as a sign of success.

But the emergence of new havens, from which Al Qaeda and its affiliates could plot new attacks, raises difficult questions for the United States on how to combat the growing threat, and creates the possibility that increased missile strikes are in the offing in Yemen and Somalia.

"Those are issues that I think the international community is going to have to address because Al Qaeda is not going away," Admiral Mullen told a Senate committee on May 21.

The C.I.A. says its drone attacks in Pakistan have disrupted Al Qaeda's operations and damaged the group's senior ranks. American officials say that strikes have killed 11 of the top 20 Qaeda leaders in the past year.

"Al Qaeda has been hit by drones and it has generated a lot of insecurity among them," said Talat Masood, a retired Pakistani general and military analyst in Islamabad.

"Many among them are uneasy and it is possible that they are leaving for Somalia and other jihadi battle fronts," he said. "The hard core, however, will like to stay on."

Without singling out any countries, Adm. Eric T. Olson, the head of the Special Operations Command, spoke in general terms last week about how the increased Pakistani military operations in the Swat Valley and early indications of a new Pakistani offensive in South Waziristan had put militants on the run.

"As the Pakistanis are applying pressure," Admiral Olson told a House panel, "it will

shift some of the sanctuaries to other places."

[From the Washington Institute for Near East Policy, July 14, 2009]

#### WANING VIGILANCE: AL-QAEDA'S RESURGENCE IN YEMEN

(By Gregory Johnsen)

Recent reports suggesting that al-Qaeda fighters are leaving Pakistan and Afghanistan, where the group has suffered serious setbacks, have renewed international concerns that Yemen is reemerging once again as a major terrorist safe haven. Although the assessments of al-Qaeda's resurgence in Yemen are accurate, the deteriorating situation is not due to U.S. successes elsewhere; rather, it is the result of waning U.S. and Yemeni attention over the past five years. Renewed cooperation between Sana and Washington in tackling al-Qaeda and addressing Yemen's systemic problems could help reduce the terrorist organization's appeal in this troubled country.

#### THE APPARENT DEFEAT OF AL-QAEDA IN YEMEN

By late 2003, al-Qaeda in Yemen had been largely defeated through the close cooperation of U.S. and Yemeni security forces. This cooperation reached its zenith in November 2002 when the CIA assassinated the head of the organization, Abu Ali al-Harithi, but the Pentagon bypassed the agreed-on cover story and leaked the operation to the press. Washington needed an early victory in the war on terror and the assassination of an al-Qaeda leader was too good to go unacknowledged.

Yemen, however, believed it was sold out to U.S. domestic concerns. Yemeni president Ali Abdullah Salih paid a high price for allowing the United States to carry out the attack—something al-Qaeda still uses to great propaganda effect—and it took more than a year for the government to publicly admit that it had authorized Washington to act.

In November 2003, the United States was still paying for this mistake when Yemen arrested al-Harithi's replacement, Muhammad Hamdi al-Ahdal, on the streets of Sana. Instead of being granted direct access to al-Ahdal, U.S. officials were forced to work through Yemeni intermediaries; however, with its leadership dead or in jail, its infrastructure largely destroyed, and its militants more attracted to the insurgency in Iraq than jihad at home, al-Qaeda in Yemen appeared largely defeated.

#### AL-QAEDA REBUILDS

The United States and Yemen both treated this victory as absolute, failing to realize that a defeated enemy is not necessarily a vanquished one. In effect, al-Qaeda was crossed off both countries' list of priorities and replaced by other, seemingly more pressing, concerns. For Washington, democratic reforms and anticorruption campaigns dominated the bilateral agenda as part of the Bush administration's desire to mold a new Middle East. For Yemen, attention was increasingly diverted by a five-year-old sectarian civil war in the north and more recently by threats of secession from the south. Over the next two years of relative calm, the threat from al-Qaeda, while not necessarily forgotten, was certainly ignored. Tourism flourished, and the U.S. State Department initiated a Yemen study-abroad program.

Even the prison break of twenty-three al-Qaeda suspects in early 2006, which U.S. officials privately blamed on Yemeni government collaboration, was treated more like an aberration than the opening volley of a new battle. Among the escapees were Qasim al-Raymi and Nasir al-Wahayshi, a former secretary to Osama bin Laden and a veteran of the fighting at Tora Bora. The nearly two

and a half years of government neglect had created a great deal of space for the two men to reorganize and rebuild al-Qaeda in Yemen.

The involvement of al-Raymi and al-Wahayshi, along with numerous other Yemenis from across the country, illustrates one of the more worrying facts about al-Qaeda's current incarnation: it is the most representative organization in the country. Al-Qaeda in Yemen transcends class, tribe, and regional identity in a way that no other Yemeni group or political party can match. Al-Wahayshi and others within the organization have proven particularly talented at articulating a narrative designed to appeal to a local audience, using everything from Palestine to the plight of Sheikh al-Muayad—a Yemeni cleric who ran a popular charity and is currently in a U.S. prison for providing funds to terrorists—to increase their rhetorical appeal to young Yemenis. Both the U.S. and Yemeni governments have been incapable of countering this approach and have effectively ceded the field to al-Qaeda.

In June 2007, al-Qaeda officially announced its presence in the country with al-Wahayshi as its commander. It underscored its intentions within days by a suicide attack on a convoy of Spanish tourists. Since then, the organization has grown stronger. In January 2008, it released the first issue of its bi-monthly journal, *Sada al-Malahim* ("The Echo of Battles"), and that same month it launched a series of attacks, culminating in the assault on the U.S. embassy in September 2008. Earlier this year, a pair of suicide bombers targeted South Koreans, attacking first a group of tourists and then the officials sent to investigate.

Al-Qaeda has also capitalized on its recent successes, attracting recruits from both Yemen and Saudi Arabia. In January, two former Guantanamo Bay detainees joined the group as commanders, spearheading the merger of local branches in Saudi Arabia and Yemen into a single regional franchise. One of the leaders, Muhammad al-Awfi, has since turned himself in to Saudi authorities, but this gesture appears to be prompted more from a desire to protect his family than from a change of heart.

This new regional organization, which calls itself al-Qaeda in the Arabian Peninsula, is indicative of al-Wahayshi's growing ambition. Throughout the first two years of his leadership, he worked hard to create a durable infrastructure that could survive the loss of key commanders. His success in this regard is demonstrated by the fact that even though the organization lost a particularly skilled local commander, Hamza al-Quayti, in a shootout with Yemeni security forces in August 2008, it was still able to launch an attack on the U.S. embassy just one month later. Al-Wahayshi is now looking to use the undergoverned regions of Yemen as a staging ground for attacks not only in Yemen but also throughout the Arabian peninsula and the Horn of Africa.

#### LESSONS LEARNED

Al-Qaeda's resurgence in Yemen does not stem from displacement of U.S. successes elsewhere. Rather, the United States and its allies need to understand that defeating one generation of al-Qaeda does not eliminate the threat completely. In conjunction with Yemen and Gulf Cooperation Council allies, Washington must develop a two-track strategy to eliminate al-Qaeda in Yemen. In the short term, the United States must discretely partner with Yemen and Saudi Arabia once again and target al-Qaeda's leadership and infrastructure. Although successfully doing so will be much harder the second time around, it can be accomplished with careful and coordinated strikes.

The long-term approach, however, is both more important and more difficult to implement. The current incarnation of al-Qaeda in

Yemen has more recruits—and younger recruits—than ever, due to al-Wahayshi's powerful propaganda as well as the lack of opportunity and an incipient breakdown in traditional social authorities. Furthermore, Yemen is preoccupied, and its security services overtaxed with the increasingly violent calls for secession from the south, threats of renewed fighting in the north, and, most importantly, a faltering economy that makes traditional modes of patronage-style governance nearly impossible. The United States and Yemen are also facing an al-Qaeda group that is now more accepted as a legitimate organization. Killing or arresting al-Qaeda leaders in Yemen and dismantling its infrastructure will be an important step forward, but will unlikely eliminate the problem in the long term. Tackling the underlying issues, although very difficult, will be key to ensuring that al-Qaeda does not reemerge in Yemen once again.

#### COMMENDING SENATOR NORM COLEMAN

Mr. ENZI. Mr. President, I appreciate having this opportunity to join my colleagues in expressing our great appreciation of the many contributions Norm Coleman has made to the work of the Senate and the future of our country during his service here. He is quite a remarkable individual, and I know I am going to miss seeing him on the Senate floor and working with him on issues of concern to the people of Minnesota and my constituents in Wyoming.

Ever since Norm's political career began, it was clear he had a mind of his own and, like the old adage about baseball umpires, he was going to call them as he saw them. That meant taking each issue as it came, carefully studying what was proposed and its consequences, and then making up his own mind on how he thought he should vote.

His independent streak and his determination to be true to his principles, his commitment to the people of Minnesota, and his internal compass transcended party politics and kept both sides guessing as to how he would vote on any given issue.

I remember the first time I met him, shortly after his election to the Senate. It turned out we had some things in common. For starters, early on in our political careers, Norm and I both served as mayors, so we had an appreciation for the demands that are made upon local officials.

Norm was elected mayor of St. Paul. I was elected mayor in my hometown of Gillette, WY. We both had some tough challenges to deal with as our communities felt the aches and pains of growth and we were fortunate enough to put together a good team who helped us to deal with the needs of the people who were counting on us to solve some pretty vexing problems.

Looking back, Norm was able to compile quite a record and he became a very popular mayor. His administration promoted policies that helped to spur an increase in the number of jobs in the St. Paul area. He also helped to

oversee a downtown revitalization that came at a time when many other similar areas across the country were downsizing and becoming a shadow of their former selves. He also managed to help engineer the return of professional hockey to Minnesota. The presence of the Minnesota Wild soon became a source of great pride to the people of his State. He was able to do all of that and so much more without increasing property taxes. That was the result of careful planning, and it understandably earned him the respect and admiration of his constituents.

Then, with a key election approaching, Norm was giving some thought to his political future. There were a lot of rumors as to his next run for office, but the people of Minnesota made it clear that they wanted him to run for the Senate, so Norm began what was to become a very difficult and emotionally charged race. When it was all over, Norm Coleman had defeated a Minnesota political icon and was sworn in to represent the people of his home State in the Senate.

Ever since that day, Norm has been working to serve the people of Minnesota and do whatever was in their best interests. Always focused on getting results, he supported the President when he agreed with him, and he never hesitated to speak up when he felt there was another way to get things done that ought to be taken up as part of the mix.

Of all his accomplishments during his service here in the Senate, there are two that I will always remember. The first was a factfinding mission we took along with several of our colleagues to Africa to determine what we could do as a nation to help combat the AIDS epidemic there. For both of us our visit turned out to be a great cultural shock. There were barriers of all kinds we had to deal with—language, customs, and technology. All of the things we take for granted here are virtually nonexistent there. The lack of any regular distribution of the written word, like a community newspaper, makes getting the most basic of information to the people an incredible challenge.

When we returned to the United States we joined with our colleagues on both sides of the aisle to develop a program that has been producing tremendous results for the past few years. The great strides that have been made have not eliminated the disease, but they have greatly increased the quality of life there. Our efforts have also helped to make people more aware of what they can do to ensure they don't get AIDS, or if they are already infected, what they must do to avoid transmitting the disease to anyone else.

We both learned from that experience the truth of the old adage—you may not be able to save the whole world, but you can always make a good effort to save part of it, and the results we have achieved in Africa and the lives we have saved will be part of Norm Coleman's legacy of service in the Senate.

Another part of the change he brought that will be felt for many years to come is the leadership he showed as the chairman of the Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations. In 2006, Norm led the effort to determine how safe and secure our Nation's ports were. The results of his investigations were unsettling and soon became the subject of headlines across the country.

Norm wasn't looking for headlines, however. He was looking to craft a workable solution to the problem, and he did when the Senate approved a program that authorized the use of pilot technology to screen incoming cargo containers for their contents. As a result of his efforts, people all across the country will be better protected from those who might wish to do us harm. Thanks to Norm, that once open door has now been closed.

Norm will not be a part of this current Congress, but his impact will continue to be felt for some time to come. He was a tireless worker for Minnesota, and although I don't know what the future holds for him, I have every confidence that we haven't heard the last of Norm Coleman. He has been and will always be an individual of vision and action. That is a combination that can't help but produce results, and I am certain he will continue to set new goals in his life and achieve them—one after the other. Good luck, my friend, and keep in touch. We will always be interested to hear from you and to benefit from your take on our work in the Congress to make Minnesota and the rest of the Nation a better place for us all to live.

#### 25TH ANNIVERSARY OF CAMP RAINBOW GOLD

Mr. RISCH. Mr. President, I rise today to recognize a program in my home State of Idaho that provides an outstanding service to many who are greatly challenged in a battle for life. Twenty-five years ago this summer, Dr. David McClusky planted the seeds of a dream he had nurtured for many years: opening a camp for kids with cancer in the mountains of Idaho.

Armed with a grant, a group of committed volunteers and the support of the American Cancer Society, 15 campers with cancer kicked off the first of 25 years of very special summers. This new retreat was called Camp Rainbow Gold.

The camp provided an opportunity for these kids to swim, ride horses, fish, hike, paint, bike, eat and laugh. They developed deep bonds with one another as they fought a disease that knows no bounds in the lives it ravages. This one week allowed them an opportunity to escape from the daily emotional and physical battle with an insidious disease.

Today, Camp Rainbow Gold continues to provide that week-long respite from the ever-present cancer fight

and allows these kids to enjoy a beautiful setting with others just like them.

This very week 85 children are in the mountains of Idaho at Camp Rainbow Gold. With an army of volunteers, Dr. McClusky is watching his dream flourish. The kids still attend free of charge. A full medical staff and a licensed social worker volunteer their time to provide medical and emotional support to the children.

As the camp grew, so did the vision to meet not only the needs of the kids with cancer, but their siblings and parents as well. Dr. McClusky's original vision has grown into two more camps: one for siblings and one for families. These camps provide a much-needed break from the demands of the intensive care required for a child with cancer.

Throughout the year, special outings are held to strengthen the bonds of friendships developed at camp and to continue the emotional support among families. In addition, a junior counselor program has been created to allow former campers who have turned 18 to continue their participation at Camp Rainbow Gold. They now offer their support and encouragement to kids who are in the same fight they, too, have fought. Campers and junior counselors are also eligible for college scholarships to help them fulfill their dreams.

It is, indeed, an honor for me to give recognition to Dr. David McClusky for his vision and many years of work in creating and sustaining Camp Rainbow Gold. I extend this recognition to the more than 200 volunteers from around Idaho who support the Camp Rainbow Gold programs; to the American Cancer Society for their backing and administrative support; and to the thousands of Idahoans and many others who provide the funds to make all of this a reality.

Congratulations, Camp Rainbow Gold, on this 25th anniversary.

#### CONGRESSMAN JOHN McHUGH

Mrs. GILLIBRAND. Mr. President, I've been proud to serve alongside Congressman JOHN McHUGH as a fellow Representative from New York and as a colleague on the Armed Services Committee.

Congressman McHUGH's long experience as a member of the Armed Services Committee has made him uniquely qualified to serve in the post we have just confirmed him to. As a member of that panel, he always fought to provide for the well-being and safety of our troops and to ensure their fundamental mission of keeping America safe.

He also held the distinct honor, which I now share, of representing Fort Drum—one of our Nation's proudest, bravest Army posts. These men and women deserve the very best from their representatives, and Congressman McHUGH did not fail them. I am confident he will bring that same leader-

ship and determination to benefit all Army families across the country.

As we work to chart a new direction in Iraq and Afghanistan, I am proud to support Congressman McHUGH's nomination for the Army's top civilian post. I congratulate Congressman McHUGH and his family, and I look forward to continue working with him to keep America and New York families safe.

#### ADDITIONAL STATEMENTS

##### CAMP AGAWAM'S 90TH ANNIVERSARY

• Ms. COLLINS. Mr. President, today I wish to recognize Camp Agawam boys' summer camp in Raymond, ME, which is celebrating its 90th year on August 14, 2009. Agawam has an exceptional history as one of the Nation's oldest summer camps.

Founded in 1919, Agawam was owned and operated continuously by the Mason family until 1985. Throughout its history, Camp Agawam has provided a unique and exciting summer camp program for boys from Maine and from across the country. The talented staff and counselors at Agawam continue to carry on the Mason family's vision of providing a safe, positive environment for boys to make lifelong friends and foster skills through outdoor recreation and activities.

Agawam has made significant contributions to youth in Maine's local communities. Strongly supported by camp alumni and parents, the camp's Maine Idea program highlights the impressive commitment by Agawam to provide free campership opportunities to Maine boys. This is truly a meaningful investment in Maine's most precious resource—our children.

I congratulate and commend Agawam's talented staff, counselors, council members, camp alumni, parents, and campers on a remarkable 90 years.●

##### 98TH BIRTHDAY OF KAPPA ALPHA PSI

• Ms. LANDRIEU. Mr. President, this year we are celebrating the 98th birthday of Kappa Alpha Psi Fraternity Incorporated. This week, thousands of members and guests from all over the world have come to Washington, DC, to participate in a week-long program of forums and seminars with a focus on leadership, brotherhood and service, known as the 79th Grand Chapter Meeting. The theme of this week's celebration is "A Call to Service: The Journey Home Continues."

The week's events commenced with a public meeting where members from the nine African-American Greek fraternities and sororities will gather in the spirit of unity. In addition, during this gathering, I was honored that Kappa Alpha Psi bestowed upon me their prestigious Humanitarian Award. This particular award is the highest honor awarded to an individual that is

not a member of the organization. I am excited to be joining the ranks of previous honorees including: Congresswoman MAXINE WATERS; Mrs. Lyndon Baines "Lady Bird" Johnson; Mr. Harry Belafonte; Mrs. Rosa Parks; and Drs. Bill and Camille Cosby, just to name a few.

I also would like to take this opportunity to commend Attorney Dwayne Murray. Dwayne currently serves as the 31st Grand Polemarch of Kappa Alpha Psi Fraternity, Incorporated, and is a resident of the great State of Louisiana. Under Dwayne's extraordinary leadership, the organization has initiated several community service projects, including "Sunday of Hope." Through this effort, Kappa Alpha Psi has raised well over \$500,000 for St. Jude Children's Research Hospital during the past 2 years. In addition, Dwayne has also spearheaded the "Greeks Learning to Avoid Debt"—GLAD—Program throughout the Nation. This program will ensure that college students receive the necessary training to use credit wisely and remain financially stable through college and beyond. His administration is committed to the theme of "One Kappa, Creating Inspiration: A Call to Service".

Kappa Alpha Psi was founded on January 5, 1911, on the campus of Indiana University in Bloomington, IN. Led by the vision of Elder Watson Diggs, it was founded by 10 God-fearing, serious-minded young men who possessed the imagination, ambition, courage, and determination to defy custom in pursuit of college educations and careers during an oppressive time in American history for African Americans.

Now, the membership has grown to more than 360 undergraduate chapters and 347 alumni chapters located throughout the United States and five foreign countries. Today, the fraternity boasts a membership of more than 150,000 college-trained young men. Among the famous Kappas are Wilt Chamberlain, Adrian Fenty, Cedric "The Entertainer" Kyles, and Tavis Smiley; and Members of the House of Representatives include SANFORD BISHOP of Georgia, WILLIAM CLAY of Missouri, JOHN CONYERS of Michigan, ALCEE HASTINGS of Florida and BENNIE THOMPSON of Mississippi. Additionally, there are many more prominent and influential men across America that represent the Kappa Alpha Psi brotherhood. Furthermore, both current and former members of my staff are proud to be members of this noble and prestigious fraternity: my former legislative director Ben Cannon, former regional manager Terrence Lockett, and my current capital regional manager Jason Wynne Hughes.

Kappa Alpha Psi has been an instrumental group in raising the profile of African-American men and has worked tirelessly to knock down barriers to advancement in our society. The brotherhood has consistently encouraged achievement in every field of human endeavor.

Members remain active for their whole lives and are encouraged to contribute to their communities. Each chapter has its own community service focus. The Baton Rouge Alumni Chapter, for example, raises money through its annual Walter Banks Golf Classic for scholarships for high school seniors and also sponsors several kids to attend Kappa Kamp—a rigorous leadership institute for elementary and middle school aged young men. Chapters all over Louisiana are similarly committed to their communities.

In the aftermath of Hurricanes Katrina and Rita in 2005, Kappas from all over the country came to the aid of hurricane survivors along the gulf coast and helped with our recovery effort.

It is with great pride that we welcome all members of Kappa Alpha Psi to our Nation's Capital as they kick off the countdown to their centennial celebration in 2011.●

#### REMEMBERING JOEL PIERCE SMITH

● Mr. SHELBY. Mr. President, today I wish to pay tribute to my good friend Joel Pierce Smith, Sr. He was a personal friend who passed away on July 30, 2009, and, along with his family, I mourn his passing.

Joel was born on February 13, 1929, in Samson, AL. After graduating from Florida State University, he went to work at the Birmingham News-Post Herald in 1953. This would mark the start of a newspaper career that would span five decades. Following his work in Birmingham, Joel served as the editor of the the Geneva Reaper for 3 years.

In 1958, Joel moved to Eufaula, AL, and was named editor of the Eufaula Tribune. A year later, he was named publisher. An avid journalist, Joel also edited and published the Cuthbert Times and News Record of Cuthbert, GA. In 1999, Joel handed over the editorial reins of the Eufaula Tribune to his son Jack, though he continued to write his weekly personal column, Candid Comments, until 2006. All told, Joel wrote Candid Comments for 51 years, never missing a week. He truly was an extraordinary newspaperman and, as such, garnered numerous state and national awards. These awards recognized both the quality of his work and his leadership in his community and amongst his peers. Among his honors were the Alabama Press Association's Community Service Award, General Excellence Award, and the Lifetime Achievement Award.

Joel was active in both the Alabama Press Association and the National Newspaper Association throughout his career. He served as president for both the Alabama Press Association and the Alabama Journalism Foundation and he held a seat on the board of directors for the Alabama Press Association and the Georgia Press Association. Additionally, Joel served as the Alabama

State Chairman of the National Newspaper Association for many years, chairing the latter's 1992 Governmental Affairs Conference in Washington, DC.

Throughout his distinguished career, Joel remained an active voice for progressive change in Eufaula. Among other things, he encouraged the reorganization of the Chamber of Commerce, promoted tourism in the area, and crusaded for the preservation of Eufaula's architectural heritage. He served on the board of trustees at Birmingham-Southern College for more than 25 years, where he became life trustee, and at Andrew College in Cuthbert, GA. Joel served on the Board of Education of the city of Eufaula and as a trustee at the Lakeside School. His good work was not overlooked in the community and he was honored as the Eufaula Kiwanis Club's Citizen of the Year in 2002 and received the Alabama Historical Commission's Distinguished Service Award.

Joel is loved and will be missed by his wife Ann Sutton Smith and his three sons, Joel Pierce Smith, Jr., Abb Jackson Smith II, and William Sutton Smith. Joel was an inspiration to many and will be remembered as an outstanding husband, father, editor, publisher, friend, and community leader.

I ask the entire Senate to join me in recognizing and honoring the life of my friend, Joel Pierce Smith.●

#### RECOGNIZING CARLISA BAYNE

● Mr. THUNE. Mr. President, today I recognize Carlisa Bayne, an intern in my Rapid City, SD, office, for all of the hard work she has done for me, my staff, and the State of South Dakota over the past several months.

Carly is a graduate of Spearfish High School in Spearfish, SD. Currently she is attending the University of Nebraska, where she is majoring in agricultural economics. She is a hard worker who has been dedicated to getting the most out of her internship experience.

I would like to extend my sincere thanks and appreciation to Carly for all of the fine work she has done and wish her continued success in the years to come.●

#### RECOGNIZING SARAH JOSEPHINE EVEN

● Mr. THUNE. Mr. President, today I recognize Sarah Josephine Even, an intern in my Washington, DC, office, for all of the hard work she has done for me, my staff, and the State of South Dakota over the past several weeks.

Sarah is a graduate of T.F. Riggs High School in Pierre, SD. Currently she is attending South Dakota State University, where she is majoring in journalism and mass communication. She is a hard worker who has been dedicated to getting the most out of her internship experience.

I would like to extend my sincere thanks and appreciation to Sarah for

all of the fine work she has done and wish her continued success in the years to come.●

#### RECOGNIZING LAUREN HAUCK

● Mr. THUNE. Mr. President, today I recognize Lauren Hauck, an intern in my Sioux Falls, SD, office, for all of the hard work she has done for me, my staff, and the State of South Dakota over the past several months.

Lauren is a graduate of Lincoln High School in Sioux Falls. Currently she is attending the University of South Dakota. She is a hard worker who has been dedicated to getting the most out of her internship experience.

I would like to extend my sincere thanks and appreciation to Lauren for all of the fine work she has done and wish her continued success in the years to come.●

#### RECOGNIZING ZACH MULDER

● Mr. THUNE. Mr. President, today I recognize Zach Mulder, an intern in my Sioux Falls, SD, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several months.

Zach is a graduate of Western Christian High School in Hull, IA. Currently he is attending Dordt College, where he is majoring in political studies. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I would like to extend my sincere thanks and appreciation to Zach for all of the fine work he has done and wish him continued success in the years to come.●

#### RECOGNIZING ALEXANDER NELSON

● Mr. THUNE. Mr. President, today I recognize Alexander Nelson, an intern in my Rapid City, SD, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Alex is a graduate of Fergus Falls Senior High School in Fergus Falls, MN. Currently he is attending the University of Arizona, where he is majoring in business economics. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I would like to extend my sincere thanks and appreciation to Alex for all of the fine work he has done and wish him continued success in the years to come.●

#### RECOGNIZING NOLAN THOMAS SCHROEDER

● Mr. THUNE. Mr. President, today I recognize Nolan Thomas Schroeder, an intern in my Washington, DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Nolan is a graduate of Hot Springs High School in Hot Springs, SD. Currently he is attending the University of Wyoming, where he is majoring in political science and business marketing. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I would like to extend my sincere thanks and appreciation to Nolan for all of the fine work he has done and wish him continued success in the years to come.●

#### RECOGNIZING SAMUEL STROMMEN

● Mr. THUNE. Mr. President, today I recognize Samuel Strommen, an intern in my Rapid City, SD, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Sam is a graduate of Stevens High School in Rapid City, SD. Currently he is attending the University of Arizona, where he is majoring in political science. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I would like to extend my sincere thanks and appreciation to Sam for all of the fine work he has done and wish him continued success in the years to come.●

#### RECOGNIZING ANDREW JONATHAN TIMM

● Mr. THUNE. Mr. President, today I recognize Andrew Jonathan Timm, an intern in my Washington, DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Andrew is a graduate of Watertown High School in Watertown, SD. Currently he is attending the University of Minnesota, where he is majoring in political science and economics. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I would like to extend my sincere thanks and appreciation to Andrew for all of the fine work he has done and wish him continued success in the years to come.●

#### RECOGNIZING DANIELLE MARIE ANDERSON

● Mr. THUNE. Mr. President, today I recognize Danielle Marie Anderson, an intern in my Washington, DC, office, for all of the hard work she has done for me, my staff, and the State of South Dakota over the past several weeks.

Danielle is a graduate of Plankinton High School in Plankinton, SD. Currently she is attending South Dakota State University, where she is majoring in business economics. She is a hard worker who has been dedicated to getting the most out of her internship experience.

I would like to extend my sincere thanks and appreciation to Danielle for

all of the fine work she has done and wish her continued success in the years to come.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

In executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MEASURES DISCHARGED

The following bill was discharged from the Committee on Banking, Housing, and Urban Affairs, and referred as indicated:

S. 1547. A bill to amend title 38, United States Code, and the United States Housing Act of 1937 to enhance and expand the assistance provided by the Department of Veterans Affairs and the Department of Housing and Urban Development to homeless veterans and veterans at risk of homelessness, and for other purposes; to the Committee on Veterans' Affairs.

#### MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 1572. A bill to provide for a point of order against any legislation that eliminates or reduces the ability of Americans to keep their health plan or their choice of doctor or that decreases the number of Americans enrolled in private health insurance, while increasing the number of Americans enrolled in government-managed health care.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-2603. A communication from the Acting Farm Bill Coordinator, Commodity Credit Corporation, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Wetlands Reserve Program" (RIN0578-AA47) received in the Office of the President of the Senate on July 31, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2604. A communication from the Acting Farm Bill Coordinator, Commodity Credit Corporation, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Environmental Quality Incentives Program" (RIN0578-AA45) received in the Office of the President of the Senate on July 31, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2605. A communication from the Acting Farm Bill Coordinator, Commodity Credit

Corporation, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Conservation Stewardship Program" (RIN0578-AA43) received in the Office of the President of the Senate on July 31, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2606. A communication from the Acting General Counsel of the Department of Agriculture, transmitting, pursuant to law, (23) reports relative to vacancy announcements, nominations, actions on nominations, or confirmations within the Department of Agriculture; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2607. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates (CMS-1406-FC/IFC; CMS-1393-F; CMS-137-F)" (RIN0938-AP33) received in the Office of the President of the Senate on August 3, 2009; to the Committee on Finance.

EC-2608. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for Fiscal Year 2010; Minimum Data Set, Version 3.0 for Skilled Nursing Facilities and Medicaid Nursing Facilities (CMS-1410-F)" (RIN0938-AP46) received in the Office of the President of the Senate on August 3, 2009; to the Committee on Finance.

EC-2609. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2010 (CMS-1538-F)" (RIN0938-AP56) received in the Office of the President of the Senate on August 30, 2009; to the Committee on Finance.

EC-2610. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Hospice Wage Index for Fiscal Year 2010 (CMS-1420-F)" (RIN0938-AP45) received in the Office of the President of the Senate on July 30, 2009; to the Committee on Finance.

EC-2611. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Treatment of Services Under Section 482, Allocation of Income and Deductions from Intangible Property, Stewardship Expense" (TD 9456) received in the Office of the President of the Senate on August 3, 2009; to the Committee on Finance.

EC-2612. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Coordinated Issue: Leveraged Oil and Gas Drilling Partnerships" ((LMSB-4-0709-030) (Uniform List No. 263.02-01)) received in the Office of the President of the Senate on August 3, 2009; to the Committee on Finance.

EC-2613. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Coordinated Issue: The Applicable Recovery Period under IRC

Section 168(a) for Open-Air Parking Structures" ((LMSB-4-0709-029)(Uniform List No. 168.18-00)) received in the Office of the President of the Senate on August 3, 2009; to the Committee on Finance.

EC-2614. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2009-0090-2009-0095); to the Committee on Foreign Relations.

EC-2615. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to expand the sales territory associated with a manufacturing license agreement for the manufacture of T-50 Military Trainer Aircraft in the Republic of Korea; to the Committee on Foreign Relations.

EC-2616. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles and defense services for the design and development of the command and control system as part of the Canadian Halifax Class Modernization Program for Canada in the amount of \$50,000,000 or more; to the Committee on Foreign Relations.

EC-2617. A communication from the Secretary, Bureau of Enforcement, Federal Maritime Commission, transmitting, pursuant to law, the report of a rule entitled "Inflation Adjustment of Civil Monetary Penalties" received in the Office of the President of the Senate on July 31, 2009; to the Committee on Commerce, Science, and Transportation.

EC-2618. A communication from the Acting Associate Managing Director-Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Assessment and Collection of Regulatory Fees for Fiscal Year 2008" ((FCC 09-21)(MD Docket No. 08-65)) received on September 30, 2008; to the Committee on Commerce, Science, and Transportation.

EC-2619. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, an annual report relative to the conduct of the Defense Acquisition Challenge Program for fiscal year 2008; to the Committee on Armed Services.

EC-2620. A communication from the Assistant Secretary of the Navy (Installations and Environment), transmitting, pursuant to law, notification of a GAO protest of the department's decision to convert to contract the bulk fuel storage and distribution functions at Marine Corps Air Station Miramar, the sustainment of the protest, and the department's corrective action based on the GAO decision; to the Committee on Armed Services.

EC-2621. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, the Defense Environmental Programs report for fiscal year 2008; to the Committee on Armed Services.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. MURRAY, from the Committee on Appropriations, with an amendment in the nature of a substitute:

H.R. 3288. A bill making appropriations for the Departments of Transportation, and

Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes (Rept. No. 111-69).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. ROCKEFELLER for the Committee on Commerce, Science, and Transportation.

\*Susan L. Kurland, of Illinois, to be an Assistant Secretary of Transportation.

\*Christopher P. Bertram, of the District of Columbia, to be an Assistant Secretary of Transportation.

\*Dennis F. Hightower, of the District of Columbia, to be Deputy Secretary of Commerce.

\*Christopher A. Hart, of Colorado, to be a Member of the National Transportation Safety Board for a term expiring December 31, 2012.

\*Patricia D. Cahill, of Missouri, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2014.

\*Daniel R. Elliott, III, of Ohio, to be a Member of the Surface Transportation Board for a term expiring December 31, 2013.

\*Robert S. Adler, of North Carolina, to be a Commissioner of the Consumer Product Safety Commission for a term of seven years from October 27, 2007.

\*Anne M. Northup, of Kentucky, to be a Commissioner of the Consumer Product Safety Commission for a term of seven years from October 27, 2004.

Mr. ROCKEFELLER. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination list which was printed in the RECORD on the date indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that this nomination lie at the Secretary's desk for the information of Senators.

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

\*National Oceanic and Atmospheric Administration nominations beginning with Denise J. Gruccio and ending with Sara A. Slaughter, which nominations were received by the Senate and appeared in the Congressional Record on July 31, 2009.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. GILLIBRAND:

S. 1577. A bill to provide the Secretary of Health and Human Services and the Secretary of Education with increased authority with respect to asthma programs, and to provide for increased funding for such programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEAHY:

S. 1578. A bill to amend chapter 171 of title 28, United States Code, (commonly referred

to as the Federal Torts Claim Act) to extend medical malpractice coverage to free clinics and the officers, governing board members, employees, and contractors of free clinics in the same manner and extend as certain Federal officers and employees; to the Committee on the Judiciary.

By Mr. REID (for Mr. BYRD):

S. 1579. A bill to amend the Wild Free-Roaming Horses and Burros Act to improve the management and long-term health of wild free-roaming horses and burros, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID (for Mr. KENNEDY (for himself, Mrs. MURRAY, Mr. DODD, Mr. HARKIN, Mr. BINGAMAN, Mr. SANDERS, Mr. BROWN, Mr. CASEY, Mr. MERKLEY, Mr. FRANKEN, Mr. LEAHY, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Ms. STABENOW, Mr. LAUTENBERG, Mr. MENENDEZ, and Mr. WHITEHOUSE)):

S. 1580. A bill to amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CRAPO (for himself and Mrs. LINCOLN):

S. 1581. A bill to improve the amendments made by the No Child Left Behind Act of 2001; to the Committee on Health, Education, Labor, and Pensions.

By Ms. STABENOW (for herself, Mr. VOINOVICH, and Mr. VITTER):

S. 1582. A bill to amend the Internal Revenue Code of 1986 to provide a credit against income tax to facilitate the accelerated development and deployment of advanced safety systems for commercial motor vehicles; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself and Ms. SNOWE):

S. 1583. A bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit through 2014, and for other purposes; to the Committee on Finance.

By Mr. MERKLEY (for himself, Ms. COLLINS, Mr. KENNEDY, Ms. SNOWE, Mr. AKAKA, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWN, Mr. BURRIS, Ms. CANTWELL, Mr. CARDIN, Mr. CASEY, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. HARKIN, Mr. INOUE, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. SANDERS, Mr. SCHUMER, Mrs. SHAHEEN, Mr. SPECTER, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. WHITEHOUSE, and Mr. WYDEN):

S. 1584. A bill to prohibit employment discrimination on the basis of sexual orientation or gender identity; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DURBIN:

S. 1585. A bill to permit pass-through payment for reasonable costs of certified registered nurse anesthetist services in critical access hospitals notwithstanding the reclassification of such hospitals as urban hospitals, including hospitals located in "Lugar counties", and for on-call and standby costs for such services; to the Committee on Finance.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:



By Mr. KOHL (for himself and Mr. HATCH):

S. Res. 241. A resolution designating the period beginning on September 13, 2009, and ending on September 19, 2009, as “National Polycystic Kidney Disease Awareness Week”, and supporting the goals and ideals of a National Polycystic Kidney Disease Awareness Week to raise public awareness and understanding of polycystic kidney disease and the impact polycystic kidney disease has on patients and future generations of their families; to the Committee on the Judiciary.

By Mr. VOINOVICH (for himself and Mr. NELSON of Florida):

S. Res. 242. A resolution supporting the goals and ideals of “National Aerospace Day”; to the Committee on Commerce, Science, and Transportation.

By Mr. VITTER:

S. Res. 243. A resolution expressing the sense of the Senate that, upon the establishment of, or enactment of legislation creating, a public health care plan, Member of Congress shall lose access to the Federal Employees Health Benefits Plan and shall be required to enroll in the public plan; to the Committee on Homeland Security and Governmental Affairs.

By Mr. FEINGOLD (for himself, Mr. MCCAIN, Mr. BROWNBACK, Mrs. BOXER, Mrs. MURRAY, Mr. VOINOVICH, Mr. WYDEN, Mrs. FEINSTEIN, Mr. GREGG, Mr. BURRIS, Ms. COLLINS, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. BAYH, Mr. MERKLEY, Ms. CANTWELL, Mr. CARDIN, Mr. KERRY, Mr. DODD, Mr. DURBIN, Mr. UDALL of Colorado, Mr. MENENDEZ, Mr. UDALL of New Mexico, Mr. BENNET, and Mr. BYRD):

S. Res. 244. A resolution commemorating the 45th anniversary of the Wilderness Act; considered and agreed to.

#### ADDITIONAL COSPONSORS

S. 205

At the request of Mr. BINGAMAN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 205, a bill to authorize additional resources to identify and eliminate illicit sources of firearms smuggled into Mexico for use by violent drug trafficking organizations, and for other purposes.

S. 211

At the request of Mrs. MURRAY, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral on human services and volunteer services, and for other purposes.

S. 240

At the request of Mrs. MURRAY, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 240, a bill to set the United States on track to ensure children are ready to learn when they begin kindergarten.

S. 428

At the request of Mr. DORGAN, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 428, a bill to allow travel between the United States and Cuba.

S. 451

At the request of Ms. COLLINS, the names of the Senator from Minnesota

(Mr. FRANKEN) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of S. 451, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the establishment of the Girl Scouts of the United States of America.

S. 461

At the request of Mrs. LINCOLN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 461, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

S. 538

At the request of Mrs. LINCOLN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 538, a bill to increase the recruitment and retention of school counselors, school social workers, and school psychologists by low-income local educational agencies.

S. 694

At the request of Mr. DODD, the names of the Senator from Nevada (Mr. REID) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 694, a bill to provide assistance to Best Buddies to support the expansion and development of mentoring programs, and for other purposes.

S. 819

At the request of Mr. DURBIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 819, a bill to provide for enhanced treatment, support, services, and research for individuals with autism spectrum disorders and their families.

S. 831

At the request of Mr. KERRY, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 831, a bill to amend title 10, United States Code, to include service qualifying for the determination of a reduced eligibility age for receipt of non-regular service retired pay.

S. 846

At the request of Mr. DURBIN, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 846, a bill to award a congressional gold medal to Dr. Muhammad Yunus, in recognition of his contributions to the fight against global poverty.

S. 883

At the request of Mr. KERRY, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 883, a bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the Medal of Honor in 1861, America's highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States, to honor the American military men and women

who have been recipients of the Medal of Honor, and to promote awareness of what the Medal of Honor represents and how ordinary Americans, through courage, sacrifice, selfless service and patriotism, can challenge fate and change the course of history.

S. 908

At the request of Mr. BAYH, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 908, a bill to amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran.

S. 941

At the request of Mr. CRAPO, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 941, a bill to reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, modernize firearm laws and regulations, protect the community from criminals, and for other purposes.

S. 994

At the request of Ms. KLOBUCHAR, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 994, a bill to amend the Public Health Service Act to increase awareness of the risks of breast cancer in young women and provide support for young women diagnosed with breast cancer.

S. 1011

At the request of Mr. AKAKA, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of S. 1011, a bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

S. 1056

At the request of Mr. VOINOVICH, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1056, a bill to establish a commission to develop legislation designed to reform tax policy and entitlement benefit programs and ensure a sound fiscal future for the United States, and for other purposes.

S. 1076

At the request of Mr. MENENDEZ, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1113

At the request of Mr. PRYOR, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1113, a bill to amend title 49, United States Code, to direct the Secretary of Transportation to establish and maintain a national clearinghouse for records related to alcohol and controlled substances testing of commercial motor vehicle operators, and for other purposes.

S. 1222

At the request of Mrs. LINCOLN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1222, a bill to amend the Internal Revenue Code of 1986 to extend and expand the benefits for businesses operating in empowerment zones, enterprise communities, or renewal communities, and for other purposes.

S. 1291

At the request of Mrs. GILLIBRAND, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1291, a bill to amend the Internal Revenue Code of 1986 to allow employers a credit against income tax for the cost of teleworking equipment and expenses.

S. 1401

At the request of Mr. MARTINEZ, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1401, a bill to provide for the award of a gold medal on behalf of Congress to Arnold Palmer in recognition of his service to the Nation in promoting excellence and good sportsmanship in golf.

S. 1422

At the request of Mrs. MURRAY, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from Maryland (Mr. CARDIN) were added as cosponsors of S. 1422, a bill to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews.

S. 1461

At the request of Mrs. BOXER, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1461, a bill to amend the Internal Revenue Code of 1986 to treat trees and vines producing fruit, nuts, or other crops as placed in service in the year in which it is planted for purposes of special allowance for depreciation.

S. 1480

At the request of Mr. KOHL, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1480, a bill to amend the Child Nutrition Act of 1966 to establish a program to improve the health and education of children through grants to expand school breakfast programs, and for other purposes.

S. 1482

At the request of Mr. KERRY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1482, a bill to reauthorize the 21st Century Nanotechnology Research and Development Act, and for other purposes.

S. 1485

At the request of Mr. MARTINEZ, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1485, a bill to improve hurricane preparedness by establishing the National Hurricane Research Initiative and for other purposes.

S. 1492

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of

S. 1492, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. 1501

At the request of Mrs. MURRAY, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1501, a bill to provide a Federal tax exemption for forest conservation bonds, and for other purposes.

S. 1536

At the request of Mr. SCHUMER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1536, a bill to amend title 23, United States Code, to reduce the amount of Federal highway funding available to States that do not enact a law prohibiting an individual from writing, sending, or reading text messages while operating a motor vehicle.

S. 1557

At the request of Mr. BURR, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1557, a bill to reinstate the Interim Management Strategy governing off-road vehicle use in the Cape Hatteras National Seashore, North Carolina, pending the issuance of a final rule for off-road vehicle use by the National Park Service.

S. CON. RES. 14

At the request of Mrs. LINCOLN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution supporting the Local Radio Freedom Act.

S. CON. RES. 25

At the request of Mr. MENENDEZ, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of S. Con. Res. 25, a concurrent resolution recognizing the value and benefits that community health centers provide as health care homes for over 18,000,000 individuals, and the importance of enabling health centers and other safety net providers to continue to offer accessible, affordable, and continuous care to their current patients and to every American who lacks access to preventive and primary care services.

S. CON. RES. 37

At the request of Mr. JOHANNIS, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Con. Res. 37, a concurrent resolution supporting the goals and ideals of senior caregiving and affordability.

S. RES. 112

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. Res. 112, a resolution designating February 8, 2010, as "Boy Scouts of America Day", in celebration of the 100th anniversary of the largest youth scouting organization in the United States.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY:

S. 1578. A bill to amend chapter 171 of title 28, United States Code, (commonly referred to as the Federal Torts Claims Act) to extend medical malpractice coverage to free clinics and the officers, governing board members, employees, and contractors of free clinics in the same manner and extend as certain Federal officers and employees; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today I am introducing legislation to clarify the application of the Federal Tort Claims Act and how it applies to free medical clinics. In my home State of Vermont, free clinics provide important health care, and in these tough economic times they provide an essential safety net for many people. Free clinics in Vermont and around the country are struggling to pay medical malpractice insurance premiums, due to an ambiguity in the Federal law. Current law provides for physicians who volunteer in free clinics to receive medical malpractice coverage under the Federal Torts Claims Act, FTCA, but it is unclear whether other professionals serving the community in free clinics are also covered. Existing Federal law explicitly provides more comprehensive FTCA coverage to community health centers, including coverage for their boards, employees, contractors and officers. But free clinics currently must purchase malpractice insurance for their board members, employees, contractors and officers. Purchasing this coverage diverts thousands of dollars annually from each of the free clinics in the country. These are funds that could be directed to providing necessary healthcare to the uninsured. This is especially true in States like Vermont, where free clinics make a significant impact serving those in rural areas. Additionally, by removing this financial burden for free clinics, the impact of organizations like Volunteers in Medicine, which assists in setting up and staffing free clinics, will be that much greater. In clarifying current law, and at minimal expense to the Federal Government, we can increase the effectiveness of free clinics that serve and care for so many Americans.

This legislation would make it clear that FTCA coverage should be the same for community health centers and free clinics. Both of these institutions deserve our help and play a fundamental role in our communities. It is my understanding that this clarification would not dramatically raise medical malpractice defense costs of the Federal Government because free clinics do not perform high risk procedures like surgeries or births. I urge my fellow Senators to join me in supporting the important work that free clinics provide our communities.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1578

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

**SECTION 1. EXTENSION OF MEDICAL MALPRACTICE COVERAGE TO FREE CLINICS.**

(a) IN GENERAL.—Chapter 171 of title 28, United States Code, is amended by adding after section 2680 the following:

**“§ 2681. Medical malpractice coverage for free clinics**

“For purposes of applying the remedy against the United States provided by sections 1346(b) and 2672 of this title and for purposes of section 224 of Public Law 78–410 (42 U.S.C. 233) a free clinic defined under section 224(o)(3)(A) of that Act shall be treated as an entity described under section 224(g)(4) of that Act. The authorization of appropriations under section 224(o)(6)(A) of that Act shall apply to the acts or omissions of officers, governing board members, employees, and contractors of free clinics”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 171 of title 28, United States Code, is amended by adding at the end the following:

“2681. Medical malpractice coverage for free clinics.”.

(2) REFERENCE.—Section 224(g)(4) of the Public Law 78–410 (42 U.S.C. 233(g)(4)) is amended by inserting “or a free clinic as provided under section 2681 of title 28, United States Code” before the period.

**SEC. 2. EFFECTIVE DATE.**

The amendments made by this Act shall take effect on the date of enactment of this Act and apply to any act or omission which occurs on or after that date.

By Mr. REID (for Mr. KENNEDY (for himself, Mrs. MURRAY, Mr. DODD, Mr. HARKIN, Mr. BINGAMAN, Mr. SANDERS, Mr. BROWN, Mr. CASEY, Mr. MERKLEY, Mr. FRANKEN, Mr. LEAHY, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Ms. STABENOW, Mr. LAUTENBERG, Mr. MENENDEZ, and Mr. WHITEHOUSE)):

S. 1580. A bill to amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, today I am pleased to introduce the Protecting America's Workers Act. Almost 40 years ago, Congress set out to guarantee a safe workplace for all Americans. The Occupational Safety and Health Act of 1970 was landmark legislation that has dramatically improved the well-being of working men and women.

Since then, the annual job fatality rate has dropped from 18 deaths per 100,000 workers to less than four. Thousands of lives have been saved each year. These are not abstract numbers—they represent thousands of families who have been spared the pain and heartache of losing a loved one on the job.

We are enormously proud of the progress we have made, but we also

know that too many workers continue to face needless dangers in the workplace. In 2007, almost 5,500 workers were killed on the job and 4 million other workers became ill or were injured. Fifteen workers still die on the job every day, and nearly 11,000 who are injured or become ill because of dangerous conditions.

We now have strong partners in the White House and at the Department of Labor who are committed to making our workplaces safer. But they need action by Congress as well. That is why today we are reintroducing the Protecting America's Workers Act, to take concrete steps to address many of the failures of the existing law.

First, this legislation expands the coverage of the current job safety laws to protect the millions of public employees and transportation workers who are not covered by these laws. In Massachusetts alone, 350,000 public sector workers lack the protections granted by the federal workplace safety law.

Our bill also protects workers who speak up about unsafe conditions on the job, by updating OSHA's whistleblower provisions. OSHA inspectors can't be in every workplace, every day. We must rely on workers who have the courage to come forward when they know their employer is cutting corners on safety. This legislation makes good on the promise to stand by those workers and guarantee they don't have to sacrifice their jobs in order to do the right thing.

In addition, the legislation gives workers and their families and representatives a seat at the table on safety issues. It includes sensible reforms to ensure that victims and their families have a right to talk to OSHA before a citation issues, to obtain copies of important documents, to be informed about their rights, and to have their voices heard before OSHA accepts a settlement that lets an employer off the hook for endangering workers.

Finally, a critical element of this bill is the increase in penalties on employers who turn their backs on the safety of their workers. Too many employers in our country blatantly ignore the law, and too often they are not held accountable. They pay only minimal fines, which they treat as just another cost of doing business.

Last year, my office issued a report that showed that the median penalty for a workplace fatality was only \$3,675. In other words, in cases investigated by OSHA where workers were killed on the job, half of all employers were fined \$3,675 or less. Workers' lives are obviously worth far more than that. We know this administration will do better, but it needs our help.

The bill makes reasonable increases in civil penalties—especially in the most serious cases. It also creates a strong criminal penalty, including the possibility of felony charges and significant prison terms. These changes will create the deterrence we need so that employers will think twice before

they gamble with workers' lives to save a few dollars. We need to send a strong message that it is unacceptable to treat workers as expendable or disposable.

Earlier this year a brave young woman, Tammy Miser, testified before our Labor Committee about her brother Shawn, who was killed in an explosion at the Hayes Lemmerz manufacturing plant in Huntington, Indiana in 2003. We can't bring Shawn back and we can't ease Tammy's pain at the loss of her beloved brother. But we can stand with her as she pursues her life's work since then of speaking out for the right of every worker to come home safely at the end of the day. I urge my colleagues to join me in honoring the millions of hardworking Americans who deserve real protection by supporting the Protecting America's Workers Act.

By Mr. MERKLEY (for himself, Ms. COLLINS, Mr. KENNEDY, Ms. SNOWE, Mr. AKAKA, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWN, Mr. BURRIS, Ms. CANTWELL, Mr. CARDIN, Mr. CASEY, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. HARKIN, Mr. INOUE, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. SANDERS, Mr. SCHUMER, Mrs. SHAHEEN, Mr. SPECTER, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. WHITEHOUSE, and Mr. WYDEN):

S. 1584. A bill to prohibit employment discrimination on the basis of sexual orientation or gender identity; to the Committee on Health, Education, Labor, and Pensions.

Mr. MERKLEY. Mr. President, I rise today to discuss the Employment Non-Discrimination Act, a bill I introduced with Senators SUSAN COLLINS, TED KENNEDY, OLYMPIA SNOWE, and more than 30 others. This historic bill will prohibit employers from discriminating against those employed or seeking employment, on the basis of their perceived or actual sexual orientation or gender identity.

Senator KENNEDY has long been a champion for civil rights, and without his decades of leadership and determination, we would not have the strong coalition of support we exhibit today with the introduction of ENDA.

I would also like to thank the Human Rights Campaign and the Leadership Conference on Civil Rights for their strong commitment to this legislation.

Our country was founded on the principle of equal justice for all. It is that philosophy which has guided us through decades of progress. It is that philosophy which led to passage of the Civil Rights Act of 1964. It was that act which paved the way for countless groundbreaking moments, and I am certain this is one of them.

Passage of the Civil Rights Act was a defining time in our history, the result of generations of people willing to march and struggle for equality. Although we have made progress, we continue that fight today. We continue that fight for those who have, for too long, been left out.

Let me be clear, discrimination on the basis of personal characteristics has no place in any workplace or in any State, and it is long overdue for Congress to extend American employees these protections. Under ENDA, employment decisions will be based upon merit and performance, not prejudice.

This is not a new idea. In fact, many states have already confronted this challenge. I am proud that Oregon has long been a leader on equality issues, and already offers protections to those discriminated against based on both sexual orientation and gender identity. But it was not easy. It is never easy.

Martin Luther King, Jr. said, "Human progress is neither automatic nor inevitable. Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals."

For the first time in history, the Senate has before it a fully inclusive bill, extending employment protections to members of communities that have historically been left out. I am proud to be a part of this historic effort to ensure that no matter who you are, you have the right to earn a living.

Corporate America is light years ahead. More than 85 percent of Fortune 500 companies have implemented non-discrimination policies that include sexual orientation, and another third have policies that include gender identity.

Unfortunately, we are still faced with cases of employment discrimination that are entirely legal—a fact I find offensive and contradictory to the founding principles of this great nation.

In 2000, Linda, an attorney, relocated to Virginia where her partner had accepted a faculty position at a university. During her job search, Linda was invited for a second interview with a local law firm. During the interview, Linda was asked why she was moving to Virginia, and she replied that her spouse had taken a position at a local university.

The firm asked Linda to come back for a third interview, which included dinner with all the partners and their spouses to "make sure they all got along." At that point, Linda told one of the partners at the firm that her spouse was a woman. It was not long before Linda was told that the firm would not hire a lesbian and the invitation to the final interview was rescinded.

Thankfully, Linda spoke out, but there are still countless instances where victims of this type of discrimination remain silent.

By extending the protection of Title VII to those victimized purely because

of who they are, we move one step closer to that fundamental principle of equal justice for every American.

I am proud that we are again taking a step toward progress. I hope my colleagues will move swiftly to pass the Employment Non-Discrimination Act, which will ensure that every American receives equality under the law.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1584

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Employment Non-Discrimination Act of 2009".

#### SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to address the history and widespread pattern of discrimination on the basis of sexual orientation or gender identity by private sector employers and local, State, and Federal government employers;

(2) to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation or gender identity, including meaningful and effective remedies for any such discrimination; and

(3) to invoke congressional powers, including the powers to enforce the 14th amendment to the Constitution, and to regulate interstate commerce and provide for the general welfare pursuant to section 8 of article I of the Constitution, in order to prohibit employment discrimination on the basis of sexual orientation or gender identity.

#### SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission.

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) EMPLOYEE.—

(A) IN GENERAL.—The term "employee" means—

(i) an employee as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee to which section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)) applies;

(iii) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or

(iv) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies.

(B) EXCEPTION.—The provisions of this Act that apply to an employee or individual shall not apply to a volunteer who receives no compensation.

(4) EMPLOYER.—The term "employer" means—

(A) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees (as defined in subparagraphs (A)(i) and (B) of paragraph (3)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;

(B) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;

(C) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code; or

(D) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(5) EMPLOYMENT AGENCY.—The term "employment agency" has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(6) GENDER IDENTITY.—The term "gender identity" means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

(7) LABOR ORGANIZATION.—The term "labor organization" has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(8) PERSON.—The term "person" has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(9) SEXUAL ORIENTATION.—The term "sexual orientation" means homosexuality, heterosexuality, or bisexuality.

(10) STATE.—The term "State" has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

(b) APPLICATION OF DEFINITIONS.—For purposes of this section, a reference in section 701 of the Civil Rights Act of 1964—

(1) to an employee or an employer shall be considered to refer to an employee (as defined in subsection (a)(3)) or an employer (as defined in subsection (a)(4)), respectively, except as provided in paragraph (2) of this subsection; and

(2) to an employer in subsection (f) of that section shall be considered to refer to an employer (as defined in subsection (a)(4)(A)).

#### SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.

(a) EMPLOYER PRACTICES.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation or gender identity; or

(2) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.

(b) EMPLOYMENT AGENCY PRACTICES.—It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual or to classify or refer for employment any individual on the basis of the actual or perceived sexual orientation or gender identity of the individual.

(c) LABOR ORGANIZATION PRACTICES.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual;

(2) to limit, segregate, or classify its membership or applicants for membership, or to

classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment, or would limit such employment or otherwise adversely affect the status of the individual as an employee or as an applicant for employment because of such individual's actual or perceived sexual orientation or gender identity; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) **TRAINING PROGRAMS.**—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the actual or perceived sexual orientation or gender identity of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) **ASSOCIATION.**—An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the actual or perceived sexual orientation or gender identity of a person with whom the individual associates or has associated.

(f) **NO PREFERENTIAL TREATMENT OR QUOTAS.**—Nothing in this Act shall be construed or interpreted to require or permit—

(1) any covered entity to grant preferential treatment to any individual or to any group because of the actual or perceived sexual orientation or gender identity of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any actual or perceived sexual orientation or gender identity employed by any employer, referred to or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such actual or perceived sexual orientation or gender identity in any community, State, section, or other area, or in the available work force in any community, State, section, or other area; or

(2) the adoption or implementation by a covered entity of a quota on the basis of actual or perceived sexual orientation or gender identity.

(g) **DISPARATE IMPACT.**—Only disparate treatment claims may be brought under this Act.

#### **SEC. 5. RETALIATION PROHIBITED.**

It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual—

(1) opposed any practice made an unlawful employment practice by this Act; or

(2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

#### **SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.**

This Act shall not apply to a corporation, association, educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 pursuant (42 U.S.C. 2000e et seq.) to section 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e-1(a), 2000e-2(e)(2)).

#### **SEC. 7. NONAPPLICATION TO MEMBERS OF THE ARMED FORCES; VETERANS' PREFERENCES.**

(a) **ARMED FORCES.**—

(1) **EMPLOYMENT.**—In this Act, the term “employment” does not apply to the relationship between the United States and members of the Armed Forces.

(2) **ARMED FORCES.**—In paragraph (1) the term “Armed Forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) **VETERANS' PREFERENCES.**—This title does not repeal or modify any Federal, State, territorial, or local law creating a special right or preference concerning employment for a veteran.

#### **SEC. 8. CONSTRUCTION.**

(a) **EMPLOYER RULES AND POLICIES.**—

(1) **IN GENERAL.**—Nothing in this Act shall be construed to prohibit a covered entity from enforcing rules and policies that do not intentionally circumvent the purposes of this Act, if the rules or policies are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.

(2) **SEXUAL HARASSMENT.**—Nothing in this Act shall be construed to limit a covered entity from taking adverse action against an individual because of a charge of sexual harassment against that individual, provided that rules and policies on sexual harassment, including when adverse action is taken, are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.

(3) **CERTAIN SHARED FACILITIES.**—Nothing in this Act shall be construed to establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen unclothed is unavoidable, provided that the employer provides reasonable access to adequate facilities that are not inconsistent with the employee's gender identity as established with the employer at the time of employment or upon notification to the employer that the employee has undergone or is undergoing gender transition, whichever is later.

(4) **ADDITIONAL FACILITIES NOT REQUIRED.**—Nothing in this Act shall be construed to require the construction of new or additional facilities.

(5) **DRESS AND GROOMING STANDARDS.**—Nothing in this Act shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law, provided that the employer permits any employee who has undergone gender transition prior to the time of employment, and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after the time of employment, to adhere to the same dress or grooming standards as apply for the gender to which the employee has transitioned or is transitioning.

(b) **EMPLOYEE BENEFITS.**—Nothing in this Act shall be construed to require a covered entity to treat an unmarried couple in the same manner as the covered entity treats a married couple for purposes of employee benefits.

(c) **DEFINITION OF MARRIAGE.**—In this Act, the term “married” refers to marriage as such term is defined in section 7 of title 1, United States Code (commonly known as the “Defense of Marriage Act”).

#### **SEC. 9. COLLECTION OF STATISTICS PROHIBITED.**

The Commission shall not collect statistics on actual or perceived sexual orientation or gender identity from covered entities, or compel the collection of such statistics by covered entities.

#### **SEC. 10. ENFORCEMENT.**

(a) **ENFORCEMENT POWERS.**—With respect to the administration and enforcement of this

Act in the case of a claim alleged by an individual for a violation of this Act—

(1) the Commission shall have the same powers as the Commission has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c),

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)), respectively;

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(3) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));

(4) the Attorney General shall have the same powers as the Attorney General has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c);

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)), respectively;

(5) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title; and

(6) a court of the United States shall have the same jurisdiction and powers as the court has to enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act (42 U.S.C. 2000e-16b(a)(1));

(C) the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)); and

(D) chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title.

(b) **PROCEDURES AND REMEDIES.**—The procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are—

(1) the procedures and remedies applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(2) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)) in the case of a claim alleged by such individual for a violation of such section;

(3) the procedures and remedies applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in the case of a claim alleged by such individual for a violation of such section; and

(4) the procedures and remedies applicable for a violation of section 411 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of such section.

(c) **OTHER APPLICABLE PROVISIONS.**—With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) for a violation of this Act, title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleged by such a covered employee for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

#### SEC. 11. STATE AND FEDERAL IMMUNITY.

(a) **ABROGATION OF STATE IMMUNITY.**—A State shall not be immune under the 11th amendment to the Constitution from a suit brought in a Federal court of competent jurisdiction for a violation of this Act.

(b) **WAIVER OF STATE IMMUNITY.**—

(1) **IN GENERAL.**—

(A) **WAIVER.**—A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee or applicant for employment of that program or activity under this Act for a remedy authorized under subsection (d).

(B) **DEFINITION.**—In this paragraph, the term "program or activity" has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

(2) **EFFECTIVE DATE.**—With respect to a particular program or activity, paragraph (1) applies to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives or uses Federal financial assistance for that program or activity.

(c) **REMEDIES AGAINST STATE OFFICIALS.**—An official of a State may be sued in the official capacity of the official by any employee or applicant for employment who has complied with the applicable procedures of section 10, for equitable relief that is authorized under this Act. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).

(d) **REMEDIES AGAINST THE UNITED STATES AND THE STATES.**—Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) by a private entity, except that—

(1) punitive damages are not available; and

(2) compensatory damages are available to the extent specified in section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

#### SEC. 12. ATTORNEYS' FEES.

Notwithstanding any other provision of this Act, in an action or administrative proceeding for a violation of this Act, an entity described in section 10(a) (other than paragraph (4) of such section), in the discretion of the entity, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs. The Commission and the United States shall be

liable for the costs to the same extent as a private person.

#### SEC. 13. POSTING NOTICES.

A covered entity who is required to post notices described in section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10) shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 10(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964.

#### SEC. 14. REGULATIONS.

(a) **IN GENERAL.**—Except as provided in subsections (b), (c), and (d), the Commission shall have authority to issue regulations to carry out this Act.

(b) **LIBRARIAN OF CONGRESS.**—The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees and applicants for employment of the Library of Congress.

(c) **BOARD.**—The Board referred to in section 10(a)(3) shall have authority to issue regulations to carry out this Act, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), with respect to covered employees, as defined in section 101 of such Act (2 U.S.C. 1301).

(d) **PRESIDENT.**—The President shall have authority to issue regulations to carry out this Act with respect to covered employees, as defined in section 411(c) of title 3, United States Code, and applicants for employment as such employees.

#### SEC. 15. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or regulation or any law or regulation of a State or political subdivision of a State.

#### SEC. 16. SEVERABILITY.

If any provision of this Act, or the application of the provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of the provision to any other person or circumstances shall not be affected by the invalidity.

#### SEC. 17. EFFECTIVE DATE.

This Act shall take effect on the date that is 6 months after the date of enactment of this Act and shall not apply to conduct occurring before the effective date.

Mr. KENNEDY. Mr. President, the promise of America will never be fulfilled as long as justice is denied to any of our fellow citizens. We have made remarkable progress in the long march towards equal opportunity and equal justice for all Americans, but this is no time for complacency. Civil rights remains the unfinished business of America. Millions of our people are still shut out of the American dream solely because of their sexual orientation or gender identity. The Employment Non-Discrimination Act brings us closer to fulfilling the promise of America for gay, lesbian, bisexual, and transgender citizens, and I am proud to join Senators MERKLEY, COLLINS, and SNOWE today in introducing this important legislation.

ENDA reflects the bedrock American principle that employees should be judged on the basis of job performance, not prejudice. It prohibits employers from making decisions about hiring, firing, promotions, or compensation

based on sexual orientation or gender identity. It makes clear that there is no right to preferential treatment, and that quotas are prohibited.

While some states have taken this important step to guarantee fair treatment in the workplace, ENDA is necessary to guarantee these rights for all. It is unacceptable that in our country in 2009, it is legal anywhere to judge people on who they are, not what they can accomplish. This legislation will right this historic wrong.

ENDA has broad, bipartisan support. It reflects non-discrimination principles already in place at some of our country's largest employers. In the past, this legislation has been endorsed by a broad religious coalition, civil rights leaders, and distinguished Americans from both parties.

I am proud to join my colleagues today in bringing us one step closer to our ideal of a nation free from prejudice and injustice. I look forward to doing all I can to pass this important legislation, and I urge my colleagues to support us.

Mr. LEAHY. Mr. President, our Nation has a proud history of diversity and a commitment to justice and equal rights for all Americans. The promise of equal rights is a foundational freedom of our democracy. Today we re-introduce important legislation to protect Americans from discrimination in the workplace. I am proud to again co-sponsor the bipartisan Employment Non-Discrimination Act, and I thank Senators KENNEDY, COLLINS, and MERKLEY for their leadership and commitment to an issue that has practical significance in the daily lives of millions of our fellow Americans.

American workers should be evaluated on the basis of how they perform, not on irrelevant considerations, such as their race, gender, gender identity or sexual orientation. It is a question of fundamental fairness. In these difficult economic times, I can think of nothing more fundamental than equality in the workplace.

The Employment Non-Discrimination Act would prohibit workplace discrimination by making it illegal to fire, refuse to hire, or refuse to promote employees simply based on a person's sexual orientation or gender identity. Currently, Federal law protects against employment discrimination on the basis of race, gender, religion, national origin or disability, but not sexual orientation or gender identity. It is long overdue for Congress to extend these protections to American workers.

Senator KENNEDY introduced the Employment Non-Discrimination Act in previous sessions of Congress, and with his leadership, it has consistently maintained strong bipartisan support. Unfortunately, partisan politics have prevented passage of the measure. It goes against our country's basic values to fire someone based on who they are or what they look like, and we should not tolerate discrimination in the workplace. I hope that this year Congress will have the ability to finally



pass this straightforward civil rights measure.

My home State of Vermont has played a constructive role in America's journey to build a more just society. Vermont added sexual orientation to the list of protected categories in its antidiscrimination in employment law in 1992, and added gender identity protection in 2007. Twenty-one other States have also taken the lead to ban discrimination on the basis of sexual orientation, with 13 of those States also banning discrimination on the basis of gender identity. But it is clear that more still needs to be done. In 30 States, it remains legal to fire someone based on their sexual orientation and in 38 States, to do so based on gender identity. Americans' civil rights should be protected no matter where they live, which is why I am proud to once again cosponsor this bill, as I have every time it has been introduced in the Senate. I believe the passage of this legislation is long overdue and it is a step in the right direction toward creating equality in the workplace.

I urge my fellow Senators to come together to support this important, bipartisan bill without further delay.

By Mr. DURBIN:

S. 1585. A bill to permit pass-through payment for reasonable costs of certified registered nurse anesthetist services in critical access hospitals notwithstanding the reclassification of such hospitals as urban hospitals, including hospitals located in "Lugar counties", and for on-call and standby costs for such services; to the Committee on Finance.

Mr. DURBIN. Mr. President, today I'm introducing the Rural Access to Nurse Anesthesia Services Act to ensure patients in rural communities can access the health care services they need. The bill would restore rural healthcare by making improvements to the Medicare Part A reasonable cost-based, pass-through program for nurse anesthesia services in rural and critical access hospitals.

Throughout the Nation, 1,300 critical access hospitals provide essential health care services to the elderly and medically underserved communities in rural areas. In my State of Illinois, 51 Critical Access Hospitals provide emergency, primary care, and surgery services directly to rural communities, covering over 60 percent of the counties in the State and reaching over 1 million rural residents.

For the majority of Critical Access Hospitals, Certified Registered Nurse Anesthetists are the sole providers of anesthesia services. The nurse anesthetists make it possible for these hospitals to offer surgical, obstetrical, trauma stabilization, interventional diagnostic and pain management capabilities.

Critical Access Hospitals depend on the work of nurse anesthetists to deliver quality care, even while the hospitals are pressed for resources. Be-

cause of the limited availability of nurse anesthetists and fewer patients in their rural communities, Critical Access Hospitals do not have anesthesia in the hospital 24/7. They rely on anesthesia and other surgery staff to be on call and available to the hospital within 15 minutes to cover emergency surgery procedures and obstetric services.

As an incentive to continue serving Medicare beneficiaries in rural areas, critical access hospitals were given permission to use reasonable, cost-based funding for anesthesia services performed by nurse anesthetists. However, recent changes in CMS policy have denied Critical Access Hospitals' claims for tens of thousands of dollars each in annual Medicare funding that they had come to rely on. In Illinois, Critical Access Hospitals lost \$50,000–\$100,000 per hospital.

These hospitals aren't just looking for a handout. Without being able to pay nurse anesthetists, the rural hospitals have to turn away patients whose procedures call for anesthesia. Patients have to travel to the next nearest hospital, which is a terrible option when dealing with trauma stabilization, obstetrical care, or even pain management, particularly for elderly patients.

In addition, despite previously reimbursing Critical Access Hospitals for the costs of having a nurse anesthetist available or on call for emergency services, CMS recently began to deny payments for this service. How is a hospital able to retain the few nurse anesthetists who are available if they can't at least keep them on call?

The Rural Access to Nurse Anesthesia Services Act will enable hospitals to offer the highest quality of care and availability of services to patients of Critical Access Hospitals. For decades, the Medicare Part A reasonable cost based pass-through program has successfully and safely ensured the availability of anesthesia services for Medicare patients in rural areas. Because of the program's success and impact, the Rural Access to Nurse Anesthesia Services Act is supported by the American Association of Nurse Anesthetists and the American Hospital Association. I hope my colleagues will join me in supporting this bill and work to protect anesthesia services for patients in rural communities.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1585

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

**SECTION 1. MEDICARE PASS-THROUGH PAYMENTS FOR CRNA SERVICES.**

(a) TREATMENT OF CRITICAL ACCESS HOSPITALS AS RURAL IN DETERMINING ELIGIBILITY FOR CRNA PASS-THROUGH PAYMENTS.—Section 9320(k) of the Omnibus Budget Reconciliation Act of 1986 (42 U.S.C. 1395k note),

as added by section 608(c)(2) of the Family Support Act of 1988 and amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989, is amended by adding at the end the following:

“(3) Any facility that qualifies as a critical access hospital (as defined in section 1861(mm)(1) of the Social Security Act) shall be treated as being located in a rural area for purposes of paragraph (1) regardless of any geographic reclassification of the facility, including such a reclassification of the county in which the facility is located as an urban county (also popularly known as a Lugar county) under section 1886(d)(8)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(8)(B)).”.

(b) TREATMENT OF STANDBY AND ON-CALL COSTS.—Such section 9320(k), as amended by subsection (a), is further amended by adding at the end the following:

“(4) In determining the reasonable costs incurred by a hospital or critical access hospital for the services of a certified registered nurse anesthetist under this subsection, the Secretary shall include standby costs and on-call costs incurred by the hospital or critical access hospital, respectively, with respect to such nurse anesthetist.”.

(c) EFFECTIVE DATES.—

(1) TREATMENT OF CAHS AS RURAL IN DETERMINING CRNA PASS-THROUGH ELIGIBILITY.—The amendment made by subsection (a) shall apply to calendar years beginning on or after the date of the enactment of this Act (regardless of whether the geographic reclassification of a critical access hospital occurred before, on, or after such date).

(2) INCLUSION OF STANDBY COSTS AND ON-CALL COSTS IN DETERMINING REASONABLE COSTS OF CRNA SERVICES.—The amendment made by subsection (b) shall apply to costs incurred in cost reporting periods beginning in fiscal years after fiscal year 2003.

**SUBMITTED RESOLUTIONS**

SENATE RESOLUTION 241—DESIGNATING THE PERIOD BEGINNING ON SEPTEMBER 13, 2009, AND ENDING ON SEPTEMBER 19, 2009, AS “NATIONAL POLYCYSTIC KIDNEY DISEASE AWARENESS WEEK”, AND SUPPORTING THE GOALS AND IDEALS OF A NATIONAL POLYCYSTIC KIDNEY DISEASE AWARENESS WEEK TO RAISE PUBLIC AWARENESS AND UNDERSTANDING OF POLYCYSTIC KIDNEY DISEASE AND THE IMPACT POLYCYSTIC KIDNEY DISEASE HAS ON PATIENTS AND FUTURE GENERATIONS OF THEIR FAMILIES

Mr. KOHL (for himself and Mr. HATCH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 241

Whereas polycystic kidney disease, known as “PKD”, is 1 of the most prevalent life-threatening genetic diseases in the United States;

Whereas polycystic kidney disease is a severe, dominantly inherited disease that has a devastating impact, in both human and economic terms, affecting equally people of all ages, races, sexes, nationalities, geographic locations, and income levels;

Whereas there are 2 hereditary forms of polycystic kidney disease, with autosomal dominant polycystic kidney disease

(ADPKD) affecting 1 in 500 people worldwide, including 600,000 patients with polycystic kidney disease in the United States, according to prevalence estimates by the National Institutes of Health;

Whereas in families in which 1 or both parents have ADPKD there is a 50-percent chance that the parents will pass the disease to their children;

Whereas autosomal recessive polycystic kidney disease (ARPKD), a rarer form of PKD, affects 1 in 20,000 live births and frequently leads to early death;

Whereas in families in which both parents carry ARPKD there is a 25-percent chance that the parents will pass the disease to their children;

Whereas, in addition to patients directly affected by polycystic kidney disease, countless additional friends, loved ones, family members, colleagues, and caregivers must shoulder the physical, emotional, and financial burdens of polycystic kidney disease;

Whereas polycystic kidney disease, for which there is no treatment or cure, is the leading cause of kidney failure resulting from a genetic disease, and 1 of the 4 leading causes of kidney failure in the United States;

Whereas the vast majority of patients with polycystic kidney disease have kidney failure at the age of 53, on average, causing a severe strain on dialysis and kidney transplantation resources and on the delivery of health care in the United States, as the largest segment of the population of the United States, the baby boomers, continues to age;

Whereas end-stage renal disease is one of the fastest growing components of the Medicare budget, and polycystic kidney disease contributes to the cost with an estimated \$2,000,000,000 budgeted annually for dialysis, kidney transplantation, and related therapies;

Whereas polycystic kidney disease is a systemic disease that causes damage to the kidneys and the cardiovascular, endocrine, hepatic, and gastrointestinal systems;

Whereas polycystic kidney disease instills in patients a fear of an unknown future with a life-threatening genetic disease, and apprehension over possible genetic discrimination;

Whereas the severity of the symptoms of polycystic kidney disease and the limited public awareness of the disease cause many patients to fail to recognize the presence of the disease, to forego regular visits to physicians, and not to receive good health or therapeutic management that would help avoid more severe complications when kidney failure occurs;

Whereas people suffering from chronic, life-threatening diseases, such as polycystic kidney disease, are more frequently predisposed to depression and the resulting consequences of depression because of anxiety over the possible pain, suffering, and premature death that people with polycystic kidney disease may face;

Whereas the Senate and taxpayers of the United States want treatments and cures for disease and hope to see results from investments in research conducted by the National Institutes of Health and from initiatives such as the National Institutes of Health Roadmap to the Future;

Whereas polycystic kidney disease is an example of how collaboration, technological innovation, scientific momentum, and public-private partnerships can—

(1) generate therapeutic interventions that directly benefit the people suffering from polycystic kidney disease;

(2) save billions of Federal dollars under Medicare, Medicaid, and other programs for dialysis, kidney transplants, immunosuppressant drugs, and related therapies; and

(3) allow several thousand openings on the kidney transplant waiting list;

Whereas improvements in diagnostic technology and the expansion of scientific knowledge about polycystic kidney disease have led to the discovery of the 3 primary genes that cause polycystic kidney disease, and the 3 primary protein products of the genes, and to the understanding of cell structures and signaling pathways that cause cyst growth that has produced multiple polycystic kidney disease clinical drug trials;

Whereas there are thousands of volunteers nationwide dedicated to expanding essential research, fostering public awareness and understanding, educating patients and their families about polycystic kidney disease to improve treatment and care, providing appropriate moral support, and encouraging people to become organ donors; and

Whereas volunteers engage in an annual national awareness event held during the third week of September, making that week an appropriate time to recognize National Polycystic Kidney Disease Awareness Week: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates the period beginning on September 13, 2009, and ending on September 19, 2009, as “National Polycystic Kidney Disease Awareness Week”;

(2) supports the goals and ideals of a national week to raise public awareness and understanding of polycystic kidney disease;

(3) recognizes the need for additional research into a cure for polycystic kidney disease; and

(4) encourages the people of the United States and interested groups—

(A) to support National Polycystic Kidney Disease Awareness Week through appropriate ceremonies and activities;

(B) to promote public awareness of polycystic kidney disease; and

(C) to foster understanding of the impact of the disease on patients and their families.

Mr. KOHL. Mr. President, I rise today along with Senator HATCH to submit a resolution to increase awareness of Polycystic Kidney Disease, PKD, a common and life threatening genetic illness.

Over 600,000 people have been diagnosed with PKD nationwide. There is no treatment or cure for this devastating disease. Families and friends struggle to fight PKD and provide unwavering support to their suffering loved ones.

But there is hope. The PKD Foundation has led the fight for increased research and patient education. Recent studies have led to the discovery of the genes that cause PKD as well as promising clinical drug trials for treatment. More needs to be done, however, and the Government wants to help.

In order to increase public awareness of this fatal disease, I propose that September 13th through the 19th be designated as National Polycystic Kidney Disease Awareness Week. This week coincides with the annual walk for PKD which takes place every September. In Wisconsin, where over 10,000 patients are living with the disease, residents gather across the State to take part in this very special walk.

Increasing awareness will help all those affected by Polycystic Kidney Disease, and I hope my colleagues will support this important resolution.

Mr. HATCH. Mr. President, I am pleased to submit, along with my colleague, Senator HERB KOHL, a resolu-

tion to designate the week of September 13–19, 2009 as National Polycystic Kidney Disease Awareness Week.

Polycystic kidney disease, or PKD, is a life-threatening, genetic disease of which most Americans are probably unaware. According to the PKD Foundation, PKD affects 600,000 Americans and 12.5 million children and adults worldwide. There is no treatment or cure, but it is our hope that, with this resolution, a National PKD Awareness Week will promote public awareness and education of this devastating disease.

PKD is one of the four leading causes of kidney failure, which also called end-stage renal disease, ESRD, PKD is characterized by the growth of numerous fluid-filled cysts in the kidney, which slowly reduce the kidney function and can eventually lead to kidney failure. Some cysts in individuals with PKD have reportedly grown to the size of a football. When PKD causes kidneys to fail, the patient requires dialysis or kidney transplantation. About one-half of people with the major type of PKD progress to kidney failure.

PKD is of particular interest to me because so many Utahns suffer from this disease. The PKD Foundation claims that approximately 5,000 individuals in Utah live with PKD, and that the incidence of end-stage renal disease in Utah is three times that of the national average. To cure PKD could result in billions of dollars in savings to the military, Medicare, Medicaid and the Veterans Administration for dialysis, transplantation and related treatments.

To promote greater understanding of this destructive genetic disease, Senator KOHL and I have introduced this resolution to designate a National Polycystic Kidney Disease Awareness Week, and I urge our colleagues to support it.

#### SENATE RESOLUTION 242—SUPPORTING THE GOALS AND IDEALS OF “NATIONAL AEROSPACE DAY”

Mr. VOINOVICH (for himself and Mr. NELSON of Florida) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 242

Whereas the missions to the moon by the National Aeronautics and Space Administration are recognized around the globe as 1 of the most outstanding achievements of humankind;

Whereas the United States is a leader in the International Space Station, the most advanced human habitation and scientific laboratory ever placed in space;

Whereas the first aircraft flight occurred in the United States, and the United States operates the largest and safest aviation system in the world;

Whereas the United States aerospace industry is a powerful, reliable source of employment, innovation, and export income, directly employing 831,000 people and supporting more than 2,000,000 jobs in related fields;

Whereas space exploration is a source of inspiration that captures the interest of young people;

Whereas aerospace education is an important component of science, technology, engineering, and mathematics education and helps to develop the science and technology workforce in the United States;

Whereas aerospace innovation has led to the development of advanced meteorological forecasting, which has saved lives around the world;

Whereas aerospace innovation has led to the development of the Global Positioning System, which has strengthened national security and increased economic productivity;

Whereas the aerospace industry assists and protects members of the Armed Forces with military communications, unmanned aerial systems, situational awareness, and satellite-guided ordinances; and

Whereas September 16, 2009, is an appropriate date to observe "National Aerospace Day"; Now, therefore, be it

*Resolved*, That the Senate—

(1) supports the goals and ideals of "National Aerospace Day"; and

(2) recognizes the contributions of the aerospace industry to the history, economy, security, and educational system of the United States.

**SENATE RESOLUTION 243—EXPRESSING THE SENSE OF THE SENATE THAT, UPON THE ESTABLISHMENT OF, OR ENACTMENT OF LEGISLATION CREATING, A PUBLIC HEALTH CARE PLAN, MEMBERS OF CONGRESS SHALL LOSE ACCESS TO THE FEDERAL EMPLOYEES HEALTH BENEFITS PLAN AND SHALL BE REQUIRED TO ENROLL IN THE PUBLIC PLAN**

Mr. VITTER submitted the following resolution; which was referred to the Committee on Homeland Security and Government Affairs:

S. RES. 243

*Resolved*, That it is the sense of the Senate that, upon the establishment of, or enactment of legislation creating, a public health care plan, Members of Congress shall lose access to the Federal Employees Health Benefits Plan and shall be required to enroll in such public health care plan.

**SENATE RESOLUTION 244—COMMEMORATING THE 45TH ANNIVERSARY OF THE WILDERNESS ACT**

Mr. FEINGOLD (for himself, Mr. MCCAIN, Mr. BROWBACK, Mrs. BOXER, Mrs. MURRAY, Mr. VOINOVICH, Mr. WYDEN, Mrs. FEINSTEIN, Mr. GREGG, Mr. BURRIS, Ms. COLLINS, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. BAYH, Mr. MERKLEY, Ms. CANTWELL, Mr. CARDIN, Mr. KERRY, Mr. DODD, Mr. DURBIN, Mr. UDALL of Colorado, Mr. MENENDEZ, Mr. UDALL of New Mexico, Mr. BENNET, and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 244

Whereas September 3, 2009, will mark the 45th anniversary of the date of enactment of the Wilderness Act (16 U.S.C. 1131 et seq.), which gave to the people of the United States the National Wilderness Preservation

System, an enduring resource of natural heritage;

Whereas great writers of the United States, including Ralph Waldo Emerson, Henry David Thoreau, Willa Cather, George Perkins Marsh, Mary Hunter Austin, and John Muir, poets such as William Cullen Bryant, and painters such as Thomas Cole, Frederic Church, Frederic Remington, Georgia O'Keefe, Albert Bierstadt, and Thomas Moran, have defined the distinct cultural value of wild nature and unique concept of wilderness in the United States;

Whereas national leaders, such as former President Theodore Roosevelt, reveled in outdoor pursuits and diligently sought to preserve opportunities to mold individual character, to shape the destiny of the Nation, to strive for balance, and to ensure the wisest use of natural resources, so as to provide the greatest good for the greatest number of people as possible;

Whereas luminaries in the conservation movement, such as scientist Aldo Leopold, forester Bob Marshall, writer Howard Zahniser, teacher Sigurd Olson, biologists Olaus, Adolph, and Mardy Murie, and conservationists David Brower and Marjory Stoneman Douglas, believed that the people of the United States could protect and preserve the wilderness in order for the wilderness to last well into the future;

Whereas Senator Hubert H. Humphrey, a Democrat from Minnesota, and Representative John Saylor, a Republican from Pennsylvania, originally introduced the Wilderness Act with strong bipartisan support in both houses of Congress;

Whereas, with the help of colleagues (including cosponsors Senators Clinton P. Anderson, Gaylord Nelson, William Proxmire, and Henry "Scoop" M. Jackson, and the Senate floor manager, Senator Frank Church) and conservation allies (such as Secretary of Interior Stewart L. Udall and Representative Morris K. Udall), Senator Humphrey and Representative Saylor worked tirelessly for 8 years to secure nearly unanimous passage of the legislation, with a vote of 78 to 12 in the Senate and 373 to 1 in the House of Representatives;

Whereas critical support in the Senate for the Wilderness Act came from 3 Senators who still serve in the Senate as of 2009: Senator Robert C. Byrd, Senator Daniel Inouye, and Senator Edward M. Kennedy;

Whereas President John F. Kennedy, who took office in 1961 with an agenda that included a plan to enact wilderness legislation, was assassinated before he could sign into law a bill concerning the wilderness;

Whereas 4 wilderness champions, Aldo Leopold, Olaus Murie, Bob Marshall, and Howard Zahniser also passed away before witnessing passage of a wilderness bill;

Whereas President Lyndon B. Johnson signed into law the Wilderness Act in the Rose Garden on September 3, 1964, establishing a system of wilderness heritage, as President Kennedy and the conservation community had envisioned and advocated for ardently;

Whereas, in 2009, as a consequence of popular support, the people of the United States continue to have a system that protects wilderness for the permanent good of the United States;

Whereas, over the 45 years since the enactment of the Wilderness Act, various Presidents of both parties, leaders of Congress, and experts in the land management agencies within the Departments of the Interior and Agriculture have expanded the system of wilderness protection;

Whereas the Wilderness Act instituted an unambiguous national policy to recognize the natural heritage of the United States as a valuable resource and to protect the wil-

derness for future generations to use and enjoy;

Whereas wilderness offers numerous values for an increasingly diverse populace, allowing youth and adults from urban and rural communities to experience nature and explore opportunities for healthy recreation;

Whereas wilderness provides intact, healthy, and biologically diverse ecosystems that will better withstand the effects of global warming and help communities in the United States adapt to a changing climate;

Whereas wilderness provides billions of dollars of ecosystem services in the form of safe drinking water, clean air, and recreational opportunities;

Whereas 44 of the 50 States have protected wilderness areas;

Whereas the abundance of natural heritage of the United States is seen from Alaska to Florida, from Fire Island in the Long Island South Shore of New York and West Sister Island of Lake Erie in Ohio, to larger areas such as the Mojave National Preserve in California and the River of No Return in Idaho; and

Whereas President Gerald R. Ford stated that the National Wilderness Preservation System "serves a basic need of all Americans, even those who may never visit a wilderness area—the preservation of a vital element in our heritage" and that "wilderness preservation ensures that a central facet of our Nation can still be realized, not just remembered"; Now, therefore, be it

*Resolved*, That the Senate—

(1) commemorates the 45th anniversary of the Wilderness Act (16 U.S.C. 1131 et seq.);

(2) recognizes and commends the extraordinary work of the individuals and organizations involved in building the National Wilderness Preservation System; and

(3) is grateful for the wilderness, a tremendous asset the United States continues to preserve as a gift to future generations of the United States.

**AMENDMENTS SUBMITTED AND PROPOSED**

SA 2300. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table.

SA 2301. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 3435, supra; which was ordered to lie on the table.

SA 2302. Mr. GREGG submitted an amendment intended to be proposed by him to the bill H.R. 3435, supra; which was ordered to lie on the table.

SA 2303. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 3435, supra; which was ordered to lie on the table.

SA 2304. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 3435, supra; which was ordered to lie on the table.

SA 2305. Mr. THUNE submitted an amendment intended to be proposed by him to the bill H.R. 3435, supra; which was ordered to lie on the table.

SA 2306. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill H.R. 3435, supra; which was ordered to lie on the table.

**TEXT OF AMENDMENTS**

**SA 2300.** Mr. HARKIN submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal

year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_\_. ELIGIBLE INDIVIDUALS.**

(a) IN GENERAL.—Section 1302(c)(1) of the Supplemental Appropriations Act, 2009 (Public Law 111-32; 123 Stat. 1910; 49 U.S.C. 32901 note) is amended by adding at the end the following:

“(H) ELIGIBLE INDIVIDUALS.—A voucher may only be issued under the Program in connection with the purchase of a new fuel efficient automobile by an individual—

“(i) who filed a return of Federal income tax for a taxable year beginning in 2008, and, if married for the taxable year concerned (as determined under section 7703 of the Internal Revenue Code of 1986), filed a joint return;

“(ii) who is not an individual with respect to whom a deduction under section 151 of the Internal Revenue Code of 1986 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual’s taxable year begins; and

“(iii) whose adjusted gross income reported in the most recent return described in clause (i) was not more than \$50,000 (\$75,000 in the case of a joint tax return or a return filed by a head of household (as defined in section 2(b) of the Internal Revenue Code of 1986)).”.

(b) REGULATIONS.—Not later than 7 days after the date of the enactment of this Act and notwithstanding the requirements of section 553 of title 5, United States Code, the Secretary of Transportation shall promulgate final regulations that require—

(1) each purchaser or leaser of a new fuel efficient automobile under the Consumer Assistance to Recycle and Save Program established under section 1302(a) of such Act (Public Law 111-32; 123 Stat. 1909; 49 U.S.C. 32901 note) to affirm on a standard form, determined by the Secretary, that such purchaser or leaser is an individual described by section 1302(c)(1)(H) of such Act, as added by subsection (a); and

(2) each dealer that receives a form described in paragraph (1) under such program to submit such form to the Secretary.

(c) FRAUD DETECTION.—Upon receipt under paragraph (2) of subsection (b) of a form described in paragraph (1) of such subsection, the Secretary shall submit such form to the Internal Revenue Service to determine whether the purchaser or leaser has violated section 641 of title 18, United States Code.

**SA 2301.** Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. STATUS REPORT AND REIMBURSEMENT OF UNFUNDED OBLIGATIONS.**

The Consumer Assistance to Recycle and Save Act of 2009 (title XIII of Public Law 111-32) is amended—

(1) in subsection (c)(1)(A), by striking “November 1, 2009” and inserting “August 8, 2009”;

(2) in subsection (g)—

(A) by amending paragraph (1) to read as follows:

“(1) DATABASE.—The Secretary shall maintain, and update each business day, a database that contains—

“(A) the vehicle identification numbers of—

“(i) all new fuel efficient vehicles purchased or leased under the Program; and

“(ii) all eligible trade-in vehicles disposed of under the Program; and

“(B) the amount of money—

“(i) obligated by the Federal Government for payment of vouchers issued under the Program; and

“(ii) remaining to be obligated for such payments from the amount appropriated for such purpose.”; and

(B) by adding at the end the following:

“(3) SUPPLEMENTAL REPORT.—No amounts may be obligated for the Program beyond the amounts appropriated under subsection (j) until after the Secretary submits a report to the committees referred to in paragraph (2) that—

“(A) evaluates the fuel efficiency standards of—

“(i) the eligible trade-in vehicles traded in under the Program; and

“(ii) the new fuel efficient automobiles purchased under the Program; and

“(B) details the administration of the Program, including the method used by the Department of Transportation—

“(i) to track the amount obligated by the Federal Government for payment of vouchers issued under the Program; and

“(ii) to determine the amount of appropriated funds remaining to be obligated under the Program.”; and

(3) in subsection (j)—

(A) by striking “There is hereby appropriated” and inserting the following:

“(3) IN GENERAL.—There is appropriated”; and

(B) by adding at the end the following:

“(2) REIMBURSEMENT OF UNFUNDED TRANSACTIONS.—In addition to the amount appropriated under paragraph (1), there is appropriated an amount equal to the amount by which the dollar value of all of the vouchers issued under the Program during the period described in subsection (c)(1)(A) exceeds \$1,000,000,000.”.

**SA 2302.** Mr. GREGG submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_\_. AMENDMENT TO THE 2010 BUDGET RESOLUTION.**

S. Con. Res. 13 (111th Congress) is amended—

(1) in section 101—

(A) in paragraph (2), strike the amount for fiscal year 2010 and insert “\$2,890,499,000,000”; and

(B) in paragraph (3)—

(i) strike the amount for fiscal year 2011 and insert “\$2,969,592,000,000”; and

(ii) strike the amount for fiscal year 2012 and insert “\$2,882,053,000,000”; and

(2) in section 401(b), by striking paragraph (2) and inserting the following:

“(2) for fiscal year 2010, \$1,085,285,000,000 in new budget authority and \$1,307,200,000,000 in outlays;”.

**SA 2303.** Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_\_. TERMINATION OF TARP.**

Section 120 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5230) is amended—

(1) by striking subsection (b); and

(2) by striking “(a) TERMINATION.—”.

**SA 2304.** Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SECTION \_\_\_\_\_. ASSISTANCE TO CHARITIES AND FAMILIES IN NEED.**

Section 1302 of the Supplemental Appropriations Act, 2009 (Public Law 111-32; 123 Stat. 1909; 49 U.S.C. 32901 note) is amended—

(1) in subsection (a)(2)(B), by inserting “or for donation to a charity”; and

(2) in subsection (c)(2)—

(A) in subparagraph (A), strike “For each” and insert “Except as provided in subparagraph (C), for each”; and

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after paragraph (B) the following:

“(C) DONATION TO CHARITY.—For each eligible trade-in vehicle surrendered to a dealer under the Program, the dealer may dispose of such vehicle by donating such vehicle to—

“(i) an organization that—

“(I) is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, including educational institutions, health care providers, and housing assistance providers described in such section; and

“(II) certifies to the Secretary that the donated vehicle will be used by the organization to further its exempt purpose or function, including to provide transportation of individuals for health care services, education, employment, general use, or other purpose relating to the provision of assistance to those in need, including sales to raise financial support for the organization; or

“(ii) a family that does not have sufficient income to afford, but can demonstrate a need for, an automobile.”.

**SA 2305.** Mr. THUNE submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SECTION \_\_\_\_\_. GOVERNMENT OWNERSHIP EXIT PLAN.**

(a) GOVERNMENT OWNERSHIP EXIT PLAN.—Title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.) is amended by adding at the end the following:

**“SEC. 137. GOVERNMENT OWNERSHIP EXIT PLAN.**

“(a) DEFINITION.—In this section, the term ‘ownership interest’ means an interest in a troubled asset described in section 3(9)(B), as in effect on the day before the date of enactment of this section, that was purchased by the Secretary under section 101(a)(1).

“(b) RE-PRIVATIZATION OF PRIVATE ENTITIES.—

“(1) PROHIBITION ON FEDERAL GOVERNMENT HOLDING OWNERSHIP INTERESTS.—

“(A) IN GENERAL.—Beginning on the date of enactment of this section, the Federal Government may not acquire, directly or indirectly, any ownership interest.

“(B) DIVESTITURE.—Except as provided in paragraph (2), the Secretary shall divest the Federal Government of any ownership interest not later than 1 year after the date of enactment of this section.

“(2) LIMITED AUTHORITY.—

“(A) IN GENERAL.—Beginning 1 year after the date of enactment of this section, the Secretary may hold an ownership interest with respect to a particular entity for a period of not more than 6 months if, not later than 1 year after the date of enactment of this section, the Secretary submits a report to Congress with respect to that entity stating that—

“(i) compliance with paragraph (1)(B) with respect to such entity would have a significant adverse impact on the taxpayers of the United States; and

“(ii) there is a reasonable expectation that a waiver of paragraph (1)(B) would allow the Secretary to recover the cost to the Federal Government of acquiring such ownership interest.

“(B) SINGLE RENEWAL.—The Secretary may renew an extension under subparagraph (A) for a single period of not more than 6 months, if the Secretary submits to Congress a report stating that the conditions described in clauses (i) and (ii) of subparagraph (A) still exist with respect to the subject ownership interest.

“(C) DEPOSIT OF FUNDS INTO TREASURY.—On and after the date of enactment of this section, all repayments of obligations arising under this Act, and all proceeds from the sale of assets acquired by the Federal Government under this Act, shall be paid into the general fund of the Treasury for reduction of the public debt, in accordance with section 106(d).

“(d) REPORTS REQUIRED.—

“(1) REPORT ON FEDERAL GOVERNMENT OWNERSHIP.—

“(A) REPORTS REQUIRED.—The Secretary shall make (and shall publicly disclose) periodic reports detailing any ownership interest held by the Federal Government, including any loan or loan guarantee made by the Board.

“(B) TIMING OF REPORTS.—The Secretary shall submit the reports under subparagraph (A)—

“(i) not later than 3 months after the date of enactment of this section; and

“(ii) each quarter of the fiscal year thereafter.

“(2) REPORTS ON WINDING DOWN OR DIVESTMENT.—

“(A) REPORTS REQUIRED.—The Secretary shall submit to Congress periodic reports on the plans of the Secretary for compliance with this section, including any plans to wind down or divest an ownership interest.

“(B) TIMING OF REPORTS.—The Secretary shall submit the reports under subparagraph (A)—

“(i) not later than 6 months after the date of enactment of this section; and

“(ii) each month thereafter until all ownership interests are divested under subsection (b)(1)(B).

“(e) PLAN FOR GOVERNMENT SPONSORED ENTERPRISES.—Not later than 90 days after the date of enactment of this section, the Secretary shall submit to Congress a report describing a plan of the Secretary—

“(1) to end the conservatorship by the Federal Government of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; and

“(2) to eliminate any form of direct ownership by the Federal Government of the Fed-

eral National Mortgage Association and the Federal Home Loan Mortgage Corporation.

“(f) FEDERAL DEPOSIT INSURANCE CORPORATION.—Nothing in this section may be construed to impede the ability of the Corporation to maintain the stability of the banking system.

#### “SEC. 138. INFLUENCE OF MANAGEMENT DECISIONS.

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘covered person’ means any person who is an officer or employee (including a special Government employee (as defined in section 202(a) of title 18, United States Code)) of the executive branch of the United States (including any independent agency of the United States); and

“(2) the term ‘significant management decision’ includes the appointment of senior executives or board members, business strategies relating to production and manufacturing, plant closings, the relocation of the headquarters of an entity, the modification of labor contracts, and other financial decisions.

“(b) INFLUENCE PROHIBITED.—

“(1) IN GENERAL.—It shall be unlawful for any covered person to knowingly make, with the intent to influence, a communication regarding a significant management decision of a recipient of assistance under this title to any officer or employee of the recipient.

“(2) CRIMINAL PENALTY.—Any covered person who violates paragraph (1) shall be fined under title 18, United States Code, imprisoned for not more than 1 year, or both.

“(c) CIVIL ACTIONS.—

“(1) IN GENERAL.—The Attorney General of the United States may bring a civil action in an appropriate United States district court against any covered person to enforce subsection (b).

“(2) CIVIL PENALTY.—Any covered person who, upon proof by a preponderance of the evidence, violates subsection (b) shall be subject to a civil penalty of not more than \$50,000 for each violation. The imposition of a civil penalty under this paragraph shall not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

“(3) ORDERS.—If the Attorney General of the United States has reason to believe that a covered person is engaging in conduct that violates subsection (b), the Attorney General may petition an appropriate United States district court for an order prohibiting the covered person from engaging in the conduct. The court may issue an order prohibiting the covered person from engaging in the conduct if the court finds that the conduct constitutes a violation of subsection (b). The filing of a petition under this paragraph shall not preclude any other remedy which is available by law to the United States or any other person.”

(b) CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 3(9) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202(9)) is amended—

(A) in subparagraph (A), by striking “; and” at the end and inserting a period;

(B) by striking “means—” and all that follows through “residential” in subparagraph (A) and inserting “means residential”; and

(C) by striking subparagraph (B).

(2) OVERSIGHT BY FINANCIAL STABILITY OVERSIGHT BOARD.—Section 104(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5214(a)) is amended—

(A) in paragraph (2), by striking “and” at the end;

(B) in paragraph (3), by striking the semicolon at the end and inserting “; and”; and

(C) by adding at the end the following:

“(4) reviewing the implementation of sections 137 and 138.”

(3) DEPOSIT OF FUNDS.—

(A) AUTHORITY TO PURCHASE.—Section 115(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225(a)(3)) is amended by striking “outstanding at any one time”.

(B) CONFORMING AMENDMENT.—Section 106(d) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5216(d)) is amended by inserting “, and repayments of obligations arising under this Act,” after “section 113”.

**SA 2306.** Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

On page 3, after line 11, insert the following:

Effective on the date of the enactment of this Act—

(1) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 25D the following new section:

#### “SEC. 25E. CREDIT FOR CERTAIN HOME PURCHASES.

“(a) ALLOWANCE OF CREDIT.—

“(1) IN GENERAL.—In the case of an individual who is a purchaser of a principal residence during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to 10 percent of the purchase price of the residence.

“(2) DOLLAR LIMITATION.—The amount of the credit allowed under paragraph (1) shall not exceed \$15,000.

“(3) ALLOCATION OF CREDIT AMOUNT.—At the election of the taxpayer, the amount of the credit allowed under paragraph (1) (after application of paragraph (2)) may be equally divided among the 2 taxable years beginning with the taxable year in which the purchase of the principal residence is made.

“(b) LIMITATIONS.—

“(1) DATE OF PURCHASE.—The credit allowed under subsection (a) shall be allowed only with respect to purchases made—

“(A) after the date of the enactment of the Act entitled ‘Making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program,’ and

“(B) on or before the date that is 1 year after such date of enactment.

“(2) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

“(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(B) the sum of the credits allowable under this subpart (other than this section) for the taxable year.

“(3) ONE-TIME ONLY.—

“(A) IN GENERAL.—If a credit is allowed under this section in the case of any individual (and such individual’s spouse, if married) with respect to the purchase of any principal residence, no credit shall be allowed under this section in any taxable year with respect to the purchase of any other principal residence by such individual or a spouse of such individual.

“(B) JOINT PURCHASE.—In the case of a purchase of a principal residence by 2 or more unmarried individuals or by 2 married individuals filing separately, no credit shall

be allowed under this section if a credit under this section has been allowed to any of such individuals in any taxable year with respect to the purchase of any other principal residence.

“(c) **PRINCIPAL RESIDENCE.**—For purposes of this section, the term ‘principal residence’ has the same meaning as when used in section 121.

“(d) **DENIAL OF DOUBLE BENEFIT.**—No credit shall be allowed under this section for any purchase for which a credit is allowed under section 36 or section 1400C.

“(e) **SPECIAL RULES.**—

“(1) **JOINT PURCHASE.**—

“(A) **MARRIED INDIVIDUALS FILING SEPARATELY.**—In the case of 2 married individuals filing separately, subsection (a) shall be applied to each such individual by substituting ‘\$7,500’ for ‘\$15,000’ in subsection (a)(1).

“(B) **UNMARRIED INDIVIDUALS.**—If 2 or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed \$15,000.

“(2) **PURCHASE.**—In defining the purchase of a principal residence, rules similar to the rules of paragraphs (2) and (3) of section 1400C(e) (as in effect on the date of the enactment of this section) shall apply.

“(3) **REPORTING REQUIREMENT.**—Rules similar to the rules of section 1400C(f) (as so in effect) shall apply.

“(f) **RECAPTURE OF CREDIT IN THE CASE OF CERTAIN DISPOSITIONS.**—

“(1) **IN GENERAL.**—In the event that a taxpayer—

“(A) disposes of the principal residence with respect to which a credit was allowed under subsection (a), or

“(B) fails to occupy such residence as the taxpayer’s principal residence,

at any time within 24 months after the date on which the taxpayer purchased such residence, then the tax imposed by this chapter for the taxable year during which such disposition occurred or in which the taxpayer failed to occupy the residence as a principal residence shall be increased by the amount of such credit.

“(2) **EXCEPTIONS.**—

“(A) **DEATH OF TAXPAYER.**—Paragraph (1) shall not apply to any taxable year ending after the date of the taxpayer’s death.

“(B) **INVOLUNTARY CONVERSION.**—Paragraph (1) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence within the 2-year period beginning on the date of the disposition or cessation referred to in such paragraph. Paragraph (1) shall apply to such new principal residence during the remainder of the 24-month period described in such paragraph as if such new principal residence were the converted residence.

“(C) **TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.**—In the case of a transfer of a residence to which section 1041(a) applies—

“(i) paragraph (1) shall not apply to such transfer, and

“(ii) in the case of taxable years ending after such transfer, paragraph (1) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

“(D) **RELOCATION OF MEMBERS OF THE ARMED FORCES.**—Paragraph (1) shall not apply in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station.

“(3) **JOINT RETURNS.**—In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

“(4) **RETURN REQUIREMENT.**—If the tax imposed by this chapter for the taxable year is increased under this subsection, the taxpayer shall, notwithstanding section 6012, be required to file a return with respect to the taxes imposed under this subtitle.

“(g) **BASIS ADJUSTMENT.**—For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.

“(h) **ELECTION TO TREAT PURCHASE IN PRIOR YEAR.**—In the case of a purchase of a principal residence after December 31, 2009, and on or before the date described in subsection (b)(1)(B), a taxpayer may elect to treat such purchase as made on December 31, 2009, for purposes of this section.”

(2) **CONFORMING AMENDMENTS.**—

(A) Section 24(b)(3)(B) of the Internal Revenue Code of 1986 is amended by striking “and 25B” and inserting “, 25B, and 25E”.

(B) Section 25(e)(1)(C)(ii) of such Code is amended by inserting “25E,” after “25D.”

(C) Section 25B(g)(2) of such Code is amended by striking “section 23” and inserting “sections 23 and 25E”.

(D) Section 904(i) of such Code is amended by striking “and 25B” and inserting “25B, and 25E”.

(E) Section 1016(a) of such Code is amended by striking “and” at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting “, and”, and by adding at the end the following new paragraph:

“(38) to the extent provided in section 25E(g).”

(3) **CLERICAL AMENDMENT.**—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25D the following new item:

“Sec. 25E. Credit for certain home purchases.”

(4) **SUNSET OF CURRENT FIRST-TIME HOME-BUYER CREDIT.**—

(A) **IN GENERAL.**—Subsection (h) of section 36 of the Internal Revenue Code of 1986 is amended by striking “before December 1, 2009” and inserting “on or before the date of the enactment of the Act entitled ‘Making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program.’”

(B) **ELECTION TO TREAT PURCHASE IN PRIOR YEAR.**—Subsection (g) of section 36 of the Internal Revenue Code of 1986 is amended by striking “before December 1, 2009” and inserting “on or before the date of the enactment of the Act entitled ‘Making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program.’”

(5) **EFFECTIVE DATE.**—The amendments made by paragraphs (1) through (4) shall apply to purchases after the date of the enactment of this Act.

(6) **TRANSFERS TO THE GENERAL FUND.**—From time to time, the Secretary of the Treasury shall transfer to the general fund of the Treasury an amount equal to the reduction in revenues to the Treasury resulting from the amendments made by paragraphs (1) through (4) of this subsection. Notwithstanding section 5 of the American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5), such amounts shall be transferred from the amounts appropriated or

made available and remaining unobligated under such Act.

## NOTICE OF HEARING

### COMMITTEE ON INDIAN AFFAIRS

Mr. DORGAN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, August 6, 2009, at 2:15 p.m. in Room 628 of the Dirksen Senate Office Building to conduct a business meeting on S.J. Res. 14, a joint resolution to acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States; H.R. 1129, a bill to authorize the Secretary of the Interior to provide an annual grant to facilitate an iron working training program for Native Americans; and S. 443, a bill to transfer certain land to the United States to be held in trust for the Hoh Indian Tribe, to place land into trust for the Hoh Indian Tribe, and for other purposes to be followed immediately by a hearing on S. 1011, the Native Hawaiian Government Reorganization Act of 2009.

Those wishing additional information may contact the Indian Affairs Committee at 202-224-2251.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on August 5, 2009, at 9:30 a.m., to conduct a hearing entitled “Examining Proposals to Enhance the Regulation of Credit Rating Agencies.”

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

### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, August 5, 2009, at 10 a.m. in room 253 of the Russell Senate Office Building.

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

### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, August 5, 2009, in Russell 253, at 2 p.m.

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

### COMMITTEE ON FOREIGN RELATIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the



Senate on Wednesday, August 5, 2009, at 10 a.m.

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

#### COMMITTEE ON FOREIGN RELATIONS

Mr. SPECTER. Mr. or Ms. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, August 5, 2009, at 2:15 p.m.

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

#### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, August 5, 2009.

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

#### SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on Wednesday, August 5, 2009, at 2:30 p.m. to conduct a hearing entitled, "Strengthening the Federal Acquisition Workforce: Government-wide Leadership and Initiatives."

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

#### PRIVILEGES OF THE FLOOR

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that Jennifer Mock, a member of the staff of the Senator from Oregon, Mr. MERKLEY, be granted the privilege of the floor.

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

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following individuals on my staff be granted the privilege of the floor during consideration of the confirmation of Judge Sotomayor: Caitlin Coan, Emily Yeska, Andrew Dusek, Dan Huffman, Raphael Graybill, Philip Feldman, Josh Gardner, and Maureen Weiland.

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

Mr. BAUCUS. I ask unanimous consent that Laura Safdie, Aaron Guile, and Kathleen Roberts, law clerks on Senator LEAHY's Judiciary Committee staff, be granted the privilege of the floor for the remainder of the debate on the nomination of Judge Sotomayor.

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

#### AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

On Tuesday, August 4, 2009, the Senate passed H.R. 2997, as amended, as follows:

##### H.R. 2997

*Resolved*, That the bill from the House of Representatives (H.R. 2997) entitled "An Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.", do pass with the following amendment:

Strike out all after the enacting clause and insert:

*That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes, namely:*

##### TITLE I

##### AGRICULTURAL PROGRAMS

##### PRODUCTION, PROCESSING AND MARKETING

##### OFFICE OF THE SECRETARY

*For necessary expenses of the Office of the Secretary of Agriculture, \$5,285,000: Provided, That not to exceed \$11,000 of this amount shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary.*

##### OFFICE OF TRIBAL RELATIONS

*For necessary expenses of the Office of Tribal Relations, \$1,000,000, to support communication and consultation activities with Federally Recognized Tribes, as well as other requirements established by law.*

##### EXECUTIVE OPERATIONS

##### OFFICE OF THE CHIEF ECONOMIST

*For necessary expenses of the Office of the Chief Economist, \$13,032,000.*

##### NATIONAL APPEALS DIVISION

*For necessary expenses of the National Appeals Division, \$15,219,000.*

##### OFFICE OF BUDGET AND PROGRAM ANALYSIS

*For necessary expenses of the Office of Budget and Program Analysis, \$9,436,000.*

##### OFFICE OF HOMELAND SECURITY

*For necessary expenses of the Office of Homeland Security, \$1,859,000.*

##### OFFICE OF THE CHIEF INFORMATION OFFICER

*For necessary expenses of the Office of the Chief Information Officer, \$63,579,000.*

##### OFFICE OF THE CHIEF FINANCIAL OFFICER

*For necessary expenses of the Office of the Chief Financial Officer, \$6,566,000: Provided, That no funds made available by this appropriation may be obligated for FAIR Act or Circular A-76 activities until the Secretary has submitted to the Committees on Appropriations of both Houses of Congress and the Committee on Oversight and Government Reform of the House of Representatives a report on the Department's contracting out policies, including agency budgets for contracting out.*

##### OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

*For necessary expenses of the Office of the Assistant Secretary for Civil Rights, \$895,000.*

##### OFFICE OF CIVIL RIGHTS

*For necessary expenses of the Office of Civil Rights, \$23,422,000.*

##### OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

*For necessary expenses of the Office of the Assistant Secretary for Administration, \$806,000.*

#### AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

##### (INCLUDING TRANSFERS OF FUNDS)

*For payment of space rental and related costs pursuant to Public Law 92-313, including authorities pursuant to the 1984 delegation of authority from the Administrator of General Services to the Department of Agriculture under 40 U.S.C. 486, for programs and activities of the Department which are included in this Act, and for alterations and other actions needed for the Department and its agencies to consolidate unneeded space into configurations suitable for release to the Administrator of General Services, and for the operation, maintenance, improvement, and repair of Agriculture buildings and facilities, and for related costs, \$274,482,000, to remain available until expended, of which \$168,901,000 shall be available for payments to the General Services Administration for rent; of which \$13,500,000 for payment to the Department of Homeland Security for building security activities; and of which \$92,081,000 for buildings operations and maintenance expenses: Provided, That the Secretary is authorized to transfer funds from a Departmental agency to this account to recover the full cost of the space and security expenses of that agency that are funded by this account when the actual costs exceed the agency estimate which will be available for the activities and payments described herein.*

#### HAZARDOUS MATERIALS MANAGEMENT

##### (INCLUDING TRANSFERS OF FUNDS)

*For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), \$5,125,000, to remain available until expended: Provided, That appropriations and funds available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.*

#### DEPARTMENTAL ADMINISTRATION

##### (INCLUDING TRANSFERS OF FUNDS)

*For Departmental Administration, \$41,319,000, to provide for necessary expenses for management support services to offices of the Department and for general administration, security, repairs and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department: Provided, That this appropriation shall be reimbursed from applicable appropriations in this Act for travel expenses incident to the holding of hearings as required by 5 U.S.C. 551-558: Provided further, That of the amount appropriated, \$13,000,000 is for stabilization and developmental activities to be carried out under the authority provided by title XIV of the Food and Agriculture Act of 1977 (7 U.S.C. 3101 et seq.) and other applicable laws.*

#### OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL RELATIONS

##### (INCLUDING TRANSFERS OF FUNDS)

*For necessary expenses of the Office of the Assistant Secretary for Congressional Relations to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison within the executive branch, \$3,968,000: Provided, That these funds may be transferred to agencies of the Department of Agriculture funded by this Act to maintain personnel at the agency level: Provided further, That no funds made available by this appropriation may be obligated after 30 days from the date of enactment of this Act, unless the Secretary has notified the Committees on Appropriations of both Houses of Congress on the allocation of these funds by USDA agency: Provided further, That no other funds appropriated to the Department by this Act shall be available*

to the Department for support of activities of congressional relations.

#### OFFICE OF COMMUNICATIONS

For necessary expenses of the Office of Communications, \$9,722,000.

#### OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, including employment pursuant to the Inspector General Act of 1978, \$88,025,000, including such sums as may be necessary for contracting and other arrangements with public agencies and private persons pursuant to section 6(a)(9) of the Inspector General Act of 1978, and including not to exceed \$125,000 for certain confidential operational expenses, including the payment of informants, to be expended under the direction of the Inspector General pursuant to Public Law 95-452 and section 1337 of Public Law 97-98: Provided, That of the amount made available for the Office of Inspector General to conduct investigations such sums as are necessary shall be made available for the inspection of the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

#### OFFICE OF THE GENERAL COUNSEL

For necessary expenses of the Office of the General Counsel, \$43,551,000.

#### OFFICE OF THE UNDER SECRETARY FOR RESEARCH, EDUCATION AND ECONOMICS

For necessary expenses of the Office of the Under Secretary for Research, Education and Economics, \$895,000.

#### ECONOMIC RESEARCH SERVICE

For necessary expenses of the Economic Research Service, \$82,078,000.

#### NATIONAL AGRICULTURAL STATISTICS SERVICE

For necessary expenses of the National Agricultural Statistics Service, \$161,830,000, of which up to \$37,908,000 shall be available until expended for the Census of Agriculture.

#### AGRICULTURAL RESEARCH SERVICE

##### SALARIES AND EXPENSES

For necessary expenses of the Agricultural Research Service and for acquisition of lands by donation, exchange, or purchase at a nominal cost not to exceed \$100, and for land exchanges where the lands exchanged shall be of equal value or shall be equalized by a payment of money to the grantor which shall not exceed 25 percent of the total value of the land or interests transferred out of Federal ownership, \$1,181,632,000, of which \$35,512,000 shall be for the purposes, and in the amounts, specified in the table titled "Congressionally Designated Projects" in the report to accompany this Act: Provided, That appropriations hereunder shall be available for the operation and maintenance of aircraft and the purchase of not to exceed one for replacement only: Provided further, That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for the construction, alteration, and repair of buildings and improvements, but unless otherwise provided, the cost of constructing any one building shall not exceed \$375,000, except for greenhouses or greenhouses which shall each be limited to \$1,200,000, and except for 10 buildings to be constructed or improved at a cost not to exceed \$750,000 each, and the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building or \$375,000, whichever is greater: Provided further, That the limitations on alterations contained in this Act shall not apply to modernization or replacement of existing facilities at Beltsville, Maryland: Provided further, That appropriations hereunder shall be available for granting easements at the Beltsville Agricultural Research Center: Provided further, That the foregoing limitations shall not apply to replacement of buildings needed to carry out the Act of April 24, 1948 (21 U.S.C. 113a): Provided further, That funds may be received from any State, other po-

litical subdivision, organization, or individual for the purpose of establishing or operating any research facility or research project of the Agricultural Research Service, as authorized by law.

#### BUILDINGS AND FACILITIES

For acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities as necessary to carry out the agricultural research programs of the Department of Agriculture, where not otherwise provided, \$47,027,000, of which \$47,027,000 shall be for the purposes, and in the amounts, specified in the table titled "Congressionally Designated Projects" in the report to accompany this Act, to remain available until expended.

#### NATIONAL INSTITUTE OF FOOD AND AGRICULTURE

##### RESEARCH AND EDUCATION ACTIVITIES

For payments to agricultural experiment stations, for cooperative forestry and other research, for facilities, and for other expenses, \$757,821,000, of which \$61,406,000 shall be for the purposes, and in the amounts, specified in the table titled "Congressionally Designated Projects" in the report to accompany this Act, as follows: to carry out the provisions of the Hatch Act of 1887 (7 U.S.C. 361a-i), \$215,000,000; for grants for cooperative forestry research (16 U.S.C. 582a through a-7), \$30,000,000; for payments to eligible institutions (7 U.S.C. 3222), \$49,000,000, provided that each institution receives no less than \$1,000,000; for special grants (7 U.S.C. 450i(c)), \$50,456,000; for competitive grants on improved pest control (7 U.S.C. 450i(c)), \$16,423,000; for competitive grants (7 U.S.C. 450i(b)), \$295,181,000, to remain available until expended; for the support of animal health and disease programs (7 U.S.C. 3195), \$1,000,000; for supplemental and alternative crops and products (7 U.S.C. 3319d), \$850,000; for grants for research pursuant to the Critical Agricultural Materials Act (7 U.S.C. 178 et seq.), \$1,083,000, to remain available until expended; for the 1994 research grants program for 1994 institutions pursuant to section 536 of Public Law 103-382 (7 U.S.C. 301 note), \$2,000,000, to remain available until expended; for rangeland research grants (7 U.S.C. 3333), \$983,000; for higher education graduate fellowship grants (7 U.S.C. 3152(b)(6)), \$3,859,000, to remain available until expended (7 U.S.C. 2209b); for a program pursuant to section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3151a), \$5,000,000, to remain available until expended; for higher education challenge grants (7 U.S.C. 3152(b)(1)), \$5,654,000; for a higher education multicultural scholars program (7 U.S.C. 3152(b)(5)), \$981,000, to remain available until expended (7 U.S.C. 2209b); for an education grants program for Hispanic-serving Institutions (7 U.S.C. 3241), \$7,737,000; for competitive grants for the purpose of carrying out all provisions of 7 U.S.C. 3156 to individual eligible institutions or consortia of eligible institutions in Alaska and in Hawaii, with funds awarded equally to each of the States of Alaska and Hawaii, \$3,200,000; for a secondary agriculture education program and 2-year post-secondary education (7 U.S.C. 3152(j)), \$983,000; for aquaculture grants (7 U.S.C. 3322), \$3,928,000; for sustainable agriculture research and education (7 U.S.C. 5811), \$14,500,000; for a program of capacity building grants (7 U.S.C. 3152(b)(4)) to institutions eligible to receive funds under 7 U.S.C. 3221 and 3222, \$16,500,000, to remain available until expended (7 U.S.C. 2209b); for payments to the 1994 Institutions pursuant to section 534(a)(1) of Public Law 103-382, \$3,342,000; for resident instruction grants for insular areas under section 1491 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3363), \$800,000; for a new era rural technology program pursuant to section 1473E of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3319e), \$750,000; for

a competitive grants program for farm business management and benchmarking (7 U.S.C. 5925f), \$2,000,000; for a competitive grants program regarding biobased energy (7 U.S.C. 8114), \$1,500,000; and for necessary expenses of Research and Education Activities, \$25,111,000, of which \$2,704,000 for the Research, Education, and Economics Information System and \$2,136,000 for the Electronic Grants Information System, are to remain available until expended.

#### NATIVE AMERICAN INSTITUTIONS ENDOWMENT FUND

For the Native American Institutions Endowment Fund authorized by Public Law 103-382 (7 U.S.C. 301 note), \$11,880,000, to remain available until expended.

#### EXTENSION ACTIVITIES

For payments to States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Micronesia, the Northern Marianas, and American Samoa, \$491,292,000, of which \$7,898,000 shall be for the purposes, and in the amounts, specified in the table titled "Congressionally Designated Projects" in the report to accompany this Act, as follows: payments for cooperative extension work under the Smith-Lever Act, to be distributed under sections 3(b) and 3(c) of said Act, and under section 208(c) of Public Law 93-471, for retirement and employees' compensation costs for extension agents, \$300,000,000; payments for extension work at the 1994 Institutions under the Smith-Lever Act (7 U.S.C. 343(b)(3)), \$4,000,000; payments for the nutrition and family education program for low-income areas under section 3(d) of the Act, \$68,139,000; payments for the pest management program under section 3(d) of the Act, \$10,085,000; payments for the farm safety program under section 3(d) of the Act, \$4,863,000; payments for New Technologies for Ag Extension under section 3(d) of the Act, \$2,000,000; payments to upgrade research, extension, and teaching facilities at institutions eligible to receive funds under 7 U.S.C. 3221 and 3222, \$18,540,000, to remain available until expended; payments for youth-at-risk programs under section 3(d) of the Smith-Lever Act, \$8,427,000; for youth farm safety education and certification extension grants, to be awarded competitively under section 3(d) of the Act, \$493,000; payments for carrying out the provisions of the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.), \$4,128,000; payments for the federally-recognized Tribes Extension Program under section 3(d) of the Smith-Lever Act, \$3,090,000; payments for sustainable agriculture programs under section 3(d) of the Act, \$4,705,000; payments for rural health and safety education as authorized by section 502(i) of Public Law 92-419 (7 U.S.C. 2662(i)), \$1,738,000; payments for cooperative extension work by eligible institutions (7 U.S.C. 3221), \$41,354,000, provided that each institution receives no less than \$1,000,000; for grants to youth organizations pursuant to 7 U.S.C. 7630, \$1,767,000; payments to carry out the food animal residue avoidance database program as authorized by 7 U.S.C. 7642, \$1,000,000; payments to carry out section 1672(e)(49) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925), as amended, \$500,000; and for necessary expenses of Extension Activities, \$16,463,000.

#### INTEGRATED ACTIVITIES

For the integrated research, education, and extension grants programs, including necessary administrative expenses, \$56,864,000, as follows: for competitive grants programs authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626), \$41,990,000, including \$12,649,000 for the water quality program, \$14,596,000 for the food safety program, \$4,096,000 for the regional pest management centers program, \$4,388,000 for the Food Quality Protection Act risk mitigation program for major food crop systems, \$1,365,000 for the crops affected by Food

Quality Protection Act implementation, \$3,054,000 for the methyl bromide transition program, and \$1,842,000 for the organic transition program; for a competitive international science and education grants program authorized under section 1459A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3292b), to remain available until expended, \$3,000,000; for grants programs authorized under section 2(c)(1)(B) of Public Law 89-106, as amended, \$732,000, to remain available until September 30, 2011, for the critical issues program; \$1,312,000 for the regional rural development centers program; and \$9,830,000 for the Food and Agriculture Defense Initiative authorized under section 1484 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, to remain available until September 30, 2011.

OFFICE OF THE UNDER SECRETARY FOR  
MARKETING AND REGULATORY PROGRAMS

For necessary expenses of the Office of the Under Secretary for Marketing and Regulatory Programs, \$895,000.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Animal and Plant Health Inspection Service, including up to \$30,000 for representation allowances and for expenses pursuant to the Foreign Service Act of 1980 (22 U.S.C. 4085), \$911,394,000, of which \$18,059,000 shall be for the purposes, and in the amounts, specified in the table titled "Congressional Designated Projects" in the report to accompany this Act, of which \$2,058,000 shall be available for the control of outbreaks of insects, plant diseases, animal diseases and for control of pest animals and birds to the extent necessary to meet emergency conditions; of which \$23,390,000 shall be used for the cotton pests program for cost share purposes or for debt retirement for active eradication zones; of which \$7,300,000 shall be for a National Animal Identification program and may only be used for ongoing activities and purposes (as of the date of enactment of this Act) relating to proposed rulemaking for that program under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act"); of which \$60,243,000 shall be used to prevent and control avian influenza and shall remain available until expended: Provided, That funds provided for the contingency fund to meet emergency conditions, information technology infrastructure, fruit fly program, emerging plant pests, cotton pests program, grasshopper and mormon cricket program, the plum pox program, the National Veterinary Stockpile, the National Animal Identification System, up to \$1,500,000 in the scrapie program for indemnities, up to \$1,000,000 for wildlife services methods development, up to \$1,000,000 of the wildlife services operations program for aviation safety, and up to 25 percent of the screwworm program shall remain available until expended: Provided further, That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 percent: Provided further, That this appropriation shall be available for the operation and maintenance of aircraft and the purchase of not to exceed four, of which two shall be for replacement only: Provided further, That, in addition, in emergencies which threaten any segment of the agricultural production industry of this country, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department such sums as may be deemed necessary, to be available only in such emergencies for the arrest and eradication of contagious or infectious disease or pests of animals, poultry, or plants, and for expenses in accordance with sections 10411 and 10417 of the Animal Health Protection Act (7

U.S.C. 8310 and 8316) and sections 431 and 442 of the Plant Protection Act (7 U.S.C. 7751 and 7772), and any unexpended balances of funds transferred for such emergency purposes in the preceding fiscal year shall be merged with such transferred amounts: Provided further, That appropriations hereunder shall be available pursuant to law (7 U.S.C. 2250) for the repair and alteration of leased buildings and improvements, but unless otherwise provided the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building: Provided further, That of the amount available under this heading, at least \$17,764,000 shall be used for the tuberculosis program (including at least \$3,000,000 for tuberculosis indemnity and depopulation).

In fiscal year 2010, the agency is authorized to collect fees to cover the total costs of providing technical assistance, goods, or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity's liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the agency, and such fees shall be credited to this account, to remain available until expended, without further appropriation, for providing such assistance, goods, or services.

BUILDINGS AND FACILITIES

For plans, construction, repair, preventive maintenance, environmental support, improvement, extension, alteration, and purchase of fixed equipment or facilities, as authorized by 7 U.S.C. 2250, and acquisition of land as authorized by 7 U.S.C. 428a, \$4,712,000, to remain available until expended.

AGRICULTURAL MARKETING SERVICE

MARKETING SERVICES

For necessary expenses of the Agricultural Marketing Service, \$90,848,000: Provided, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

Fees may be collected for the cost of standardization activities, as established by regulation pursuant to law (31 U.S.C. 9701).

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed \$64,583,000 (from fees collected) shall be obligated during the current fiscal year for administrative expenses: Provided, That if crop size is understated and/or other uncontrollable events occur, the agency may exceed this limitation by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

FUNDS FOR STRENGTHENING MARKETS, INCOME,  
AND SUPPLY (SECTION 32)

(INCLUDING TRANSFERS OF FUNDS)

Funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be used only for commodity program expenses as authorized therein, and other related operating expenses, including not less than \$20,000,000 for replacement of a system to support commodity purchases, except for: (1) transfers to the Department of Commerce as authorized by the Fish and Wildlife Act of August 8, 1956; (2) transfers otherwise provided in this Act; and (3) not more than \$20,056,000 for formulation and administration of marketing agreements and orders pursuant to the Agricultural Marketing Agreement Act of 1937 and the Agricultural Act of 1961.

PAYMENTS TO STATES AND POSSESSIONS

For payments to departments of agriculture, bureaus and departments of markets, and similar agencies for marketing activities under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623(b)), \$1,334,000.

GRAIN INSPECTION, PACKERS AND STOCKYARDS  
ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Grain Inspection, Packers and Stockyards Administration, \$41,564,000: Provided, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

LIMITATION ON INSPECTION AND WEIGHING  
SERVICES EXPENSES

Not to exceed \$42,463,000 (from fees collected) shall be obligated during the current fiscal year for inspection and weighing services: Provided, That if grain export activities require additional supervision and oversight, or other uncontrollable factors occur, this limitation may be exceeded by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

OFFICE OF THE UNDER SECRETARY FOR FOOD  
SAFETY

For necessary expenses of the Office of the Under Secretary for Food Safety, \$813,000.

FOOD SAFETY AND INSPECTION SERVICE

For necessary expenses to carry out services authorized by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, including not to exceed \$50,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), \$1,018,520,000; and in addition, \$1,000,000 may be credited to this account from fees collected for the cost of laboratory accreditation as authorized by section 1327 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 138f): Provided, That funds provided for the Public Health Data Communication Infrastructure system shall remain available until expended: Provided further, That no fewer than 150 full-time equivalent positions shall be employed during fiscal year 2010 for purposes dedicated solely to inspections and enforcement related to the Humane Methods of Slaughter Act: Provided further, That of the amount available under this heading, \$3,000,000 shall be obligated to maintain the Humane Animal Tracking System as part of the Public Health Data Communication Infrastructure System: Provided further, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

OFFICE OF THE UNDER SECRETARY FOR FARM  
AND FOREIGN AGRICULTURAL SERVICES

For necessary expenses of the Office of the Under Secretary for Farm and Foreign Agricultural Services, \$895,000.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Farm Service Agency, \$1,603,777,000: Provided, That the Secretary is authorized to use the services, facilities, and authorities (but not the funds) of the Commodity Credit Corporation to make program payments for all programs administered by the Agency: Provided further, That other funds made available to the Agency for authorized activities may be advanced to and merged with this account: Provided further, That funds made available to county committees shall remain available until expended.

STATE MEDIATION GRANTS

For grants pursuant to section 502(b) of the Agricultural Credit Act of 1987, as amended (7 U.S.C. 5101-5106), \$4,369,000.

GRASSROOTS SOURCE WATER PROTECTION  
PROGRAM

For necessary expenses to carry out wellhead or groundwater protection activities under section 12400 of the Food Security Act of 1985 (16 U.S.C. 3839bb-2), \$5,000,000, to remain available until expended.

DAIRY INDEMNITY PROGRAM  
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses involved in making indemnity payments to dairy farmers and manufacturers of dairy products under a dairy indemnity program, such sums as may be necessary, to remain available until expended: Provided, That such program is carried out by the Secretary in the same manner as the dairy indemnity program described in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387, 114 Stat. 1549A-12).

AGRICULTURAL CREDIT INSURANCE FUND  
PROGRAM ACCOUNT  
(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C. 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, Indian tribe land acquisition loans (25 U.S.C. 488), boll weevil loans (7 U.S.C. 1989), direct and guaranteed conservation loans (7 U.S.C. 1924 et seq.) and Indian highly fractionated land loans (25 U.S.C. 488), to be available from funds in the Agricultural Credit Insurance Fund, as follows: farm ownership loans, \$1,892,990,000, of which \$1,500,000,000 shall be for unsubsidized guaranteed loans and \$392,990,000 shall be for direct loans; operating loans, \$1,994,467,000, of which \$1,150,000,000 shall be for unsubsidized guaranteed loans, \$144,467,000 shall be for subsidized guaranteed loans and \$700,000,000 shall be for direct loans; Indian tribe land acquisition loans, \$2,000,000; conservation loans, \$150,000,000, of which \$75,000,000 shall be for guaranteed loans and \$75,000,000 shall be for direct loans; Indian highly fractionated land loans, \$10,000,000; and for boll weevil eradication program loans, \$100,000,000: Provided, That the Secretary shall deem the pink bollworm to be a boll weevil for the purpose of boll weevil eradication program loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, as follows: farm ownership loans, \$21,584,000, of which \$5,550,000 shall be for unsubsidized guaranteed loans, and \$16,034,000 shall be for direct loans; operating loans, \$80,402,000, of which \$26,910,000 shall be for unsubsidized guaranteed loans, \$20,312,000 shall be for subsidized guaranteed loans, and \$33,180,000 shall be for direct loans; conservation loans, \$1,343,000, of which \$278,000 shall be for guaranteed loans, and \$1,065,000 shall be for direct loans; and Indian highly fractionated land loans, \$793,000.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$321,093,000, of which \$313,173,000 shall be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".

Funds appropriated by this Act to the Agricultural Credit Insurance Program Account for farm ownership, operating, and conservation direct loans and guaranteed loans may be transferred among these programs: Provided, That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer.

RISK MANAGEMENT AGENCY

For necessary expenses of the Risk Management Agency, \$79,425,000: Provided, That the funds made available under section 522(e) of the Federal Crop Insurance Act (7 U.S.C. 1522(e)) may be used for the Common Information Man-

agement System: Provided further, That not to exceed \$1,000 shall be available for official reception and representation expenses, as authorized by 7 U.S.C. 1506(i).

CORPORATIONS

The following corporations and agencies are hereby authorized to make expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided.

FEDERAL CROP INSURANCE CORPORATION FUND

For payments as authorized by section 516 of the Federal Crop Insurance Act (7 U.S.C. 1516), such sums as may be necessary, to remain available until expended.

COMMODITY CREDIT CORPORATION FUND  
REIMBURSEMENT FOR NET REALIZED LOSSES  
(INCLUDING TRANSFERS OF FUNDS)

For the current fiscal year, such sums as may be necessary to reimburse the Commodity Credit Corporation for net realized losses sustained, but not previously reimbursed, pursuant to section 2 of the Act of August 17, 1961 (15 U.S.C. 713a-11): Provided, That of the funds available to the Commodity Credit Corporation under section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i) for the conduct of its business with the Foreign Agricultural Service, up to \$5,000,000 may be transferred to and used by the Foreign Agricultural Service for information resource management activities of the Foreign Agricultural Service that are not related to Commodity Credit Corporation business.

HAZARDOUS WASTE MANAGEMENT  
(LIMITATION ON EXPENSES)

For the current fiscal year, the Commodity Credit Corporation shall not expend more than \$5,000,000 for site investigation and cleanup expenses, and operations and maintenance expenses to comply with the requirement of section 107(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(g)), and section 6001 of the Resource Conservation and Recovery Act (42 U.S.C. 6961).

TITLE II

CONSERVATION PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR NATURAL  
RESOURCES AND ENVIRONMENT

For necessary expenses of the Office of the Under Secretary for Natural Resources and Environment, \$895,000.

NATURAL RESOURCES CONSERVATION SERVICE  
CONSERVATION OPERATIONS

For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a-f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests therein for use in the plant materials program by donation, exchange, or purchase at a nominal cost not to exceed \$100 pursuant to the Act of August 3, 1956 (7 U.S.C. 428a); purchase and erection or alteration or improvement of permanent and temporary buildings; and operation and maintenance of aircraft, \$949,577,000, to remain available until September 30, 2011, of which up to \$50,730,000 may be used in planning and carrying out projects for resource conservation and development and for

sound land use pursuant to the provisions of sections 31 and 32 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010-1011; 76 Stat. 607); the Act of April 27, 1935 (16 U.S.C. 590a-590f); and subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451-3461), and of which \$21,511,000 shall be for the purposes, and in the amounts, specified in the table titled "Congressionally Designated Projects" in the report to accompany this Act: Provided, That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for construction and improvement of buildings and public improvements at plant materials centers, except that the cost of alterations and improvements to other buildings and other public improvements shall not exceed \$250,000: Provided further, That the Secretary is authorized to transfer ownership of all land, buildings, and related improvements of the Natural Resources Conservation Service facilities located in Medicine Bow, Wyoming, to the Medicine Bow Conservation District: Provided further, That when buildings or other structures are erected on non-Federal land, that the right to use such land is obtained as provided in 7 U.S.C. 2250a.

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures, including but not limited to research, engineering operations, methods of cultivation, the growing of vegetation, rehabilitation of existing works and changes in use of land, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1005 and 1007-1009), the provisions of the Act of April 27, 1935 (16 U.S.C. 590a-f), and in accordance with the provisions of laws relating to the activities of the Department, \$24,394,000, to remain available until expended, of which \$16,750,000 shall be for the purposes, and in the amounts, specified in the table titled "Congressionally Designated Projects" in the report to accompany this Act: Provided, That not to exceed \$15,000,000 of this appropriation shall be available for technical assistance.

WATERSHED REHABILITATION PROGRAM

For necessary expenses to carry out rehabilitation of structural measures, in accordance with section 14 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012), and in accordance with the provisions of laws relating to the activities of the Department, \$40,161,000, to remain available until expended.

TITLE III

RURAL DEVELOPMENT PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR RURAL  
DEVELOPMENT

For necessary expenses of the Office of the Under Secretary for Rural Development, \$895,000.

RURAL DEVELOPMENT SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs in the Rural Development mission area, including activities with institutions concerning the development and operation of agricultural cooperatives; and for cooperative agreements; \$207,237,000: Provided, That notwithstanding any other provision of law, funds appropriated under this section may be used for advertising and promotional activities that support the Rural Development mission area: Provided further, That not more than \$10,000 may be expended to provide modest nonmonetary awards to non-USA employees: Provided further, That any balances available from prior years for the Rural Utilities Service, Rural Housing Service, and the Rural Business-Cooperative Service salaries and expenses accounts shall be transferred to and merged with this appropriation.

RURAL HOUSING SERVICE  
RURAL HOUSING INSURANCE FUND PROGRAM  
ACCOUNT  
(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, as follows: \$13,226,501,000 for loans to section 502 borrowers, of which \$1,226,501,000 shall be for direct loans, and of which \$12,000,000,000 shall be for unsubsidized guaranteed loans; \$34,412,000 for section 504 housing repair loans; \$69,512,000 for section 515 rental housing; \$129,090,000 for section 538 guaranteed multi-family housing loans; \$5,045,000 for section 524 site loans; \$11,448,000 for credit sales of acquired property, of which up to \$1,448,000 may be for multi-family credit sales; and \$4,970,000 for section 523 self-help housing land development loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: section 502 loans, \$217,322,000, of which \$44,522,000 shall be for direct loans, and of which \$172,800,000, to remain available until expended, shall be for unsubsidized guaranteed loans; section 504 housing repair loans, \$4,422,000; repair, rehabilitation, and new construction of section 515 rental housing, \$18,935,000; section 538 multi-family housing guaranteed loans, \$1,485,000; and credit sales of acquired property, \$556,000: Provided, That section 538 multi-family housing guaranteed loans funded pursuant to this paragraph shall not be subject to a guarantee fee and the interest on such loans may not be subsidized: Provided further, That any balances for a demonstration program for the preservation and revitalization of the section 515 multi-family rental housing properties as authorized by Public Law 109-97 and Public Law 110-5 shall be transferred to and merged with the "Rural Housing Service, Multi-family Housing Revitalization Program Account".

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$468,593,000, which shall be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses".

RENTAL ASSISTANCE PROGRAM

For rental assistance agreements entered into or renewed pursuant to the authority under section 521(a)(2) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Housing Act of 1949, \$980,000,000; and, in addition, such sums as may be necessary, as authorized by section 521(c) of the Act, to liquidate debt incurred prior to fiscal year 1992 to carry out the rental assistance program under section 521(a)(2) of the Act: Provided, That of this amount, up to \$5,958,000 may be available for debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Act, and not to exceed \$50,000 per project for advances to nonprofit organizations or public agencies to cover direct costs (other than purchase price) incurred in purchasing projects pursuant to section 502(c)(5)(C) of the Act: Provided further, That of this amount not less than \$2,030,000 is available for newly constructed units financed by section 515 of the Housing Act of 1949, and not less than \$3,400,000 is for newly constructed units financed under sections 514 and 516 of the Housing Act of 1949: Provided further, That rental assistance agreements entered into or renewed during the current fiscal year shall be funded for a one-year period: Provided further, That any unexpended balances remaining at the end of such one-year agreements may be transferred and used for the purposes of any debt reduction; maintenance, repair, or rehabilitation of any existing projects;

preservation; and rental assistance activities authorized under title V of the Act: Provided further, That rental assistance provided under agreements entered into prior to fiscal year 2010 for a farm labor multi-family housing project financed under section 514 or 516 of the Act may not be recaptured for use in another project until such assistance has remained unused for a period of 12 consecutive months, if such project has a waiting list of tenants seeking such assistance or the project has rental assistance eligible tenants who are not receiving such assistance: Provided further, That such recaptured rental assistance shall, to the extent practicable, be applied to another farm labor multi-family housing project financed under section 514 or 516 of the Act.

MULTI-FAMILY HOUSING REVITALIZATION  
PROGRAM ACCOUNT

For the rural housing voucher program as authorized under section 542 of the Housing Act of 1949, but notwithstanding subsection (b) of such section, for the cost to conduct a housing demonstration program to provide revolving loans for the preservation of low-income multi-family housing projects, and for additional costs to conduct a demonstration program for the preservation and revitalization of multi-family rental housing properties described in this paragraph, \$39,651,000, to remain available until expended: Provided, That of the funds made available under this heading, \$18,000,000 shall be available for rural housing vouchers to any low-income household (including those not receiving rental assistance) residing in a property financed with a section 515 loan which has been prepaid after September 30, 2005: Provided further, That the amount of such voucher shall be the difference between comparable market rent for the section 515 unit and the tenant paid rent for such unit: Provided further, That funds made available for such vouchers shall be subject to the availability of annual appropriations: Provided further, That the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable to section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (including the ability to pay administrative costs related to delivery of the voucher funds): Provided further, That if the Secretary determines that the amount made available for vouchers in this or any other Act is not needed for vouchers, the Secretary may use such funds for the demonstration programs for the preservation and revitalization of multi-family rental housing properties described in this paragraph: Provided further, That of the funds made available under this heading, \$1,791,000 shall be available for the cost of loans to private nonprofit organizations, or such nonprofit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of low-income multi-family housing projects: Provided further, That loans under such demonstration program shall have an interest rate of not more than 1 percent direct loan to the recipient: Provided further, That the Secretary may defer the interest and principal payment to the Rural Housing Service for up to 3 years and the term of such loans shall not exceed 30 years: Provided further, That of the funds made available under this heading, \$19,860,000 shall be available for a demonstration program for the preservation and revitalization of the section 514, 515, and 516 multi-family rental housing properties to restructure existing USDA multi-family housing loans, as the Secretary deems appropriate, expressly for the purposes of ensuring the project has sufficient resources to preserve the project for the purpose of providing safe and affordable housing for low-income residents and farm laborers including reducing or eliminating interest; deferring loan payments, subordinating, re-

ducing or reamortizing loan debt; and other financial assistance including advances, payments and incentives (including the ability of owners to obtain reasonable returns on investment) required by the Secretary: Provided further, That the Secretary shall as part of the preservation and revitalization agreement obtain a restrictive use agreement consistent with the terms of the restructuring: Provided further, That if the Secretary determines that additional funds for vouchers described in this paragraph are needed, funds for the preservation and revitalization demonstration program may be used for such vouchers: Provided further, That the Secretary may use any unobligated funds appropriated for the rural housing voucher program in a prior fiscal year to support information technology activities of the Rural Housing Service to the extent the Secretary determines that additional funds are not needed for this fiscal year to provide vouchers described in this paragraph: Provided further, That if Congress enacts legislation to permanently authorize a multi-family rental housing loan restructuring program similar to the demonstration program described herein, the Secretary may use funds made available for the demonstration program under this heading to carry out such legislation with the prior notification of the Committees on Appropriations of both Houses of Congress.

MUTUAL AND SELF-HELP HOUSING GRANTS

For grants and contracts pursuant to section 523(b)(1)(A) of the Housing Act of 1949 (42 U.S.C. 1490c), \$38,727,000, to remain available until expended.

RURAL HOUSING ASSISTANCE GRANTS

(INCLUDING TRANSFER OF FUNDS)

For grants and contracts for very low-income housing repair, supervisory and technical assistance, compensation for construction defects, and rural housing preservation made by the Rural Housing Service, as authorized by 42 U.S.C. 1474, 1479(c), 1490e, and 1490m, \$41,500,000, to remain available until expended: Provided, That any balances to carry out a housing demonstration program to provide revolving loans for the preservation of low-income multi-family housing projects as authorized in Public Law 108-447 and Public Law 109-97 shall be transferred to and merged with the "Rural Housing Service, Multi-family Housing Revitalization Program Account".

FARM LABOR PROGRAM ACCOUNT

For the cost of direct loans, grants, and contracts, as authorized by 42 U.S.C. 1484 and 1486, \$16,968,000, to remain available until expended, for direct farm labor housing loans and domestic farm labor housing grants and contracts.

RURAL COMMUNITY FACILITIES PROGRAM  
ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of direct loans, loan guarantees, and grants for rural community facilities programs as authorized by section 306 and described in section 381E(d)(1) of the Consolidated Farm and Rural Development Act, \$54,993,000, to remain available until expended: Provided, That \$6,256,000 of the amount appropriated under this heading shall be available for a Rural Community Development Initiative: Provided further, That such funds shall be used solely to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, low-income rural communities, and Federally Recognized Native American Tribes to undertake projects to improve housing, community facilities, community and economic development projects in rural areas: Provided further, That such funds shall be made available to qualified private, nonprofit and public intermediary organizations proposing to carry out a program of financial and technical assistance: Provided further, That such intermediary organizations shall provide matching funds from other



sources, including Federal funds for related activities, in an amount not less than funds provided: Provided further, That \$13,902,000 of the amount appropriated under this heading shall be to provide grants for facilities in rural communities with extreme unemployment and severe economic depression (Public Law 106-387), with up to 5 percent for administration and capacity building in the State rural development offices: Provided further, That \$3,972,000 of the amount appropriated under this heading shall be available for community facilities grants to tribal colleges, as authorized by section 306(a)(19) of such Act: Provided further, That sections 381E-H and 381N of the Consolidated Farm and Rural Development Act are not applicable to the funds made available under this heading: Provided further, That any prior balances in the Rural Development, Rural Community Advancement Program account for programs authorized by section 306 and described in section 381E(d)(1) of such Act be transferred and merged with this account and any other prior balances from the Rural Development, Rural Community Advancement Program account that the Secretary determines is appropriate to transfer.

**RURAL BUSINESS—COOPERATIVE SERVICE**  
**RURAL BUSINESS PROGRAM ACCOUNT**  
 (INCLUDING TRANSFERS OF FUNDS)

For the cost of loan guarantees and grants, for the rural business development programs authorized by sections 306 and 310B and described in sections 310B(f) and 381E(d)(3) of the Consolidated Farm and Rural Development Act, \$97,116,000, to remain available until expended: Provided, That of the amount appropriated under this heading, not to exceed \$500,000 shall be made available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development and \$2,979,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 2009aa et seq.) for any Rural Community Advancement Program purpose as described in section 381E(d) of the Consolidated Farm and Rural Development Act, of which not more than 5 percent may be used for administrative expenses: Provided further, That \$4,000,000 of the amount appropriated under this heading shall be for business grants to benefit Federally Recognized Native American Tribes, including \$250,000 for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development: Provided further, That sections 381E-H and 381N of the Consolidated Farm and Rural Development Act are not applicable to funds made available under this heading: Provided further, That any prior balances in the Rural Development, Rural Community Advancement Program account for programs authorized by sections 306 and 310B and described in sections 310B(f) and 381E(d)(3) of such Act be transferred and merged with this account and any other prior balances from the Rural Development, Rural Community Advancement Program account that the Secretary determines is appropriate to transfer.

**RURAL DEVELOPMENT LOAN FUND PROGRAM**  
**ACCOUNT**  
 (INCLUDING TRANSFER OF FUNDS)

For the principal amount of direct loans, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), \$33,536,000.

For the cost of direct loans, \$8,464,000, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), of which \$1,035,000 shall be available through June 30, 2010, for Federally Recognized Native American Tribes and of which \$2,070,000 shall be available through June 30, 2010, for Mississippi Delta Region counties (as determined in accordance with Public Law 100-460): Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, for administrative expenses to carry out the direct loan programs, \$4,941,000 shall be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses".

**RURAL ECONOMIC DEVELOPMENT LOANS PROGRAM**  
**ACCOUNT**  
 (INCLUDING RESCISSION OF FUNDS)

For the principal amount of direct loans, as authorized under section 313 of the Rural Electrification Act, for the purpose of promoting rural economic development and job creation projects, \$33,077,000.

Of the funds derived from interest on the cushion of credit payments, as authorized by section 313 of the Rural Electrification Act of 1936, \$43,000,000 shall not be obligated and \$43,000,000 are rescinded.

**RURAL COOPERATIVE DEVELOPMENT GRANTS**

For rural cooperative development grants authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(i)), \$38,854,000, of which \$300,000 shall be for a cooperative research agreement with a qualified academic institution to conduct research on the national economic impact of all types of cooperatives; and of which \$2,800,000 shall be for cooperative agreements for the appropriate technology transfer for rural areas program: Provided, That not to exceed \$3,463,000 shall be for cooperatives or associations of cooperatives whose primary focus is to provide assistance to small, socially disadvantaged producers and whose governing board and/or membership is comprised of at least 75 percent socially disadvantaged members; and of which \$21,867,000, to remain available until expended, shall be for value-added agricultural product market development grants, as authorized by section 231 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1621 note).

**RURAL MICROENTERPRISE INVESTMENT PROGRAM**  
**ACCOUNT**

For the cost of loans and grants, \$22,000,000 as authorized by section 379E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 et seq.): Provided, That such costs of loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

**RURAL ENERGY FOR AMERICA PROGRAM**

For the cost of a program of loan guarantees and grants, under the same terms and conditions as authorized by section 9007 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107), \$68,130,000: Provided, That the cost of loan guarantees, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

**BIOREFINERY ASSISTANCE PROGRAM ACCOUNT**

For the cost of guaranteed loans, \$17,339,000, as authorized by section 9003 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107): Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

**RURAL UTILITIES SERVICE**

**RURAL WATER AND WASTE DISPOSAL PROGRAM**  
**ACCOUNT**  
 (INCLUDING TRANSFERS OF FUNDS)

For the cost of direct loans, loan guarantees, and grants for the rural water, waste water, waste disposal, and solid waste management programs authorized by sections 306, 306A, 306C, 306D, 306E, and 310B and described in sections 306C(a)(2), 306D, 306E, and 381E(d)(2) of the Consolidated Farm and Rural Development Act, \$568,730,000, to remain available until expended, of which not to exceed \$497,000 shall be available for the rural utilities program described in section 306(a)(2)(B) of such Act, and of which not to exceed \$993,000 shall be available for the rural utilities program described in section 306E

of such Act: Provided, That \$70,000,000 of the amount appropriated under this heading shall be for loans and grants including water and waste disposal systems grants authorized by 306C(a)(2)(B) and 306D of the Consolidated Farm and Rural Development Act, Federally-recognized Native American Tribes authorized by 306C(a)(1), and the Department of Hawaiian Home Lands (of the State of Hawaii): Provided further, That such loans and grants shall not be subject to any matching requirements: Provided further, That not to exceed \$19,000,000 of the amount appropriated under this heading shall be for technical assistance grants for rural water and waste systems pursuant to section 306(a)(14) of such Act, unless the Secretary makes a determination of extreme need, of which \$5,600,000 shall be made available for a grant to a qualified non-profit multi-state regional technical assistance organization, with experience in working with small communities on water and waste water problems, the principal purpose of such grant shall be to assist rural communities with populations of 3,300 or less, in improving the planning, financing, development, operation, and management of water and waste water systems, and of which not less than \$800,000 shall be for a qualified national Native American organization to provide technical assistance for rural water systems for tribal communities: Provided further, That not to exceed \$14,000,000 of the amount appropriated under this heading shall be for contracting with qualified national organizations for a circuit rider program to provide technical assistance for rural water systems: Provided further, That \$17,500,000 of the amount appropriated under this heading shall be transferred to, and merged with, the Rural Utilities Service, High Energy Cost Grants Account to provide grants authorized under section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 918a): Provided further, That any prior year balances for high cost energy grants authorized by section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 918a) shall be transferred to and merged with the Rural Utilities Service, High Energy Costs Grants Account: Provided further, That sections 381E-H and 381N of the Consolidated Farm and Rural Development Act are not applicable to the funds made available under this heading: Provided further, That any prior balances in the Rural Development, Rural Community Advancement Program account programs authorized by sections 306, 306A, 306C, 306D, 306E, and 310B and described in sections 306C(a)(2), 306D, 306E, and 381E(d)(2) of such Act be transferred to and merged with this account and any other prior balances from the Rural Development, Rural Community Advancement Program account that the Secretary determines is appropriate to transfer.

**RURAL ELECTRIFICATION AND**  
**TELECOMMUNICATIONS LOANS PROGRAM ACCOUNT**  
 (INCLUDING TRANSFER OF FUNDS)

The principal amount of direct and guaranteed loans as authorized by sections 305 and 306 of the Rural Electrification Act of 1936 (7 U.S.C. 935 and 936) shall be made as follows: 5 percent rural electrification loans, \$100,000,000; loans made pursuant to section 306 of that Act, rural electric, \$6,500,000,000; guaranteed underwriting loans pursuant to section 313A, \$500,000,000; 5 percent rural telecommunications loans, \$145,000,000; cost of money rural telecommunications loans, \$250,000,000; and for loans made pursuant to section 306 of that Act, rural telecommunications loans, \$295,000,000.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$39,959,000, which shall be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses".

**DISTANCE LEARNING, TELEMEDICINE, AND**  
**BROADBAND PROGRAM**

For the principal amount of broadband telecommunication loans, \$531,699,000.



For grants for telemedicine and distance learning services in rural areas, as authorized by 7 U.S.C. 950aaa et seq., \$37,755,000, to remain available until expended: Provided, That \$3,000,000 shall be made available for grants authorized by 379G of the Consolidated Farm and Rural Development Act: Provided further, That \$4,965,000 shall be made available to those non-commercial educational television broadcast stations that serve rural areas and are qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934, including associated translators and repeaters, regardless of the location of their main transmitter, studio-to-transmitter links, and equipment to allow local control over digital content and programming through the use of high-definition broadcast, multi-casting and datacasting technologies.

For the cost of broadband loans, as authorized by section 601 of the Rural Electrification Act, \$38,495,000, to remain available until expended: Provided, That the cost of direct loans shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, \$13,406,000, to remain available until expended, for a grant program to finance broadband transmission in rural areas eligible for Distance Learning and Telemedicine Program benefits authorized by 7 U.S.C. 950aaa.

#### TITLE IV

##### DOMESTIC FOOD PROGRAMS

##### OFFICE OF THE UNDER SECRETARY FOR FOOD, NUTRITION AND CONSUMER SERVICES

For necessary expenses of the Office of the Under Secretary for Food, Nutrition and Consumer Services, \$813,000.

##### FOOD AND NUTRITION SERVICE

##### CHILD NUTRITION PROGRAMS

##### (INCLUDING TRANSFERS OF FUNDS)

In lieu of the amounts made available in section 14222(b) of the Food, Conservation, and Energy Act of 2008, for necessary expenses to carry out the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21; \$16,801,584,000, to remain available through September 30, 2011, of which \$2,000,000 may be used to carry out the school community garden pilot program established under section 18(g)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(g)(3)) and shall be derived by transfer of the amount made available under the heading "ANIMAL AND PLANT HEALTH INSPECTION SERVICE" of title I for "SALARIES AND EXPENSES" of which \$10,051,707,000 is hereby appropriated and \$6,747,877,000 shall be derived by transfer from funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c): Provided, That of the total amount available, \$5,000,000 shall be available to be awarded as competitive grants to implement section 4405 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246), and may be awarded notwithstanding the limitations imposed by sections 4405(b)(1)(A) and 4405(c)(1)(A).

##### SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For necessary expenses to carry out the WIC Program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), \$7,552,000,000, to remain available through September 30, 2011: Provided, That none of the funds provided in this account shall be available for the purchase of infant formula except in accordance with the cost containment and competitive bidding requirements specified in section 17 of such Act: Provided further, That none of the funds provided shall be available for activities that are not fully reimbursed by other Federal Government departments or agencies unless authorized by section 17 of such Act.

##### SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

For necessary expenses to carry out the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.),

\$61,351,846,000, of which \$3,000,000,000, to remain available through September 30, 2011, shall be placed in reserve for use only in such amounts and at such times as may become necessary to carry out program operations: Provided, That funds provided herein shall be expended in accordance with section 16 of the Food and Nutrition Act of 2008: Provided further, That this appropriation shall be subject to any work registration or workfare requirements as may be required by law: Provided further, That funds made available for Employment and Training under this heading shall remain available until expended, notwithstanding section 16(h)(1) of the Food and Nutrition Act of 2008: Provided further, That funds made available under this heading may be used to enter into contracts and employ staff to conduct studies, evaluations, or to conduct activities related to program integrity provided that such activities are authorized by the Food and Nutrition Act of 2008.

##### COMMODITY ASSISTANCE PROGRAM

For necessary expenses to carry out disaster assistance and the Commodity Supplemental Food Program as authorized by section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); the Emergency Food Assistance Act of 1983; special assistance for the nuclear affected islands, as authorized by section 103(f)(2) of the Compact of Free Association Amendments Act of 2003 (Public Law 108-188); and the Farmers' Market Nutrition Program, as authorized by section 17(m) of the Child Nutrition Act of 1966, \$233,388,000, to remain available through September 30, 2011: Provided, That none of these funds shall be available to reimburse the Commodity Credit Corporation for commodities donated to the program: Provided further, That notwithstanding any other provision of law, effective with funds made available in fiscal year 2010 to support the Seniors Farmers' Market Nutrition Program, as authorized by section 4402 of the Farm Security and Rural Investment Act of 2002, such funds shall remain available through September 30, 2011: Provided further, That of the funds made available under section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)), the Secretary may use up to 10 percent for costs associated with the distribution of commodities.

##### NUTRITION PROGRAMS ADMINISTRATION

For necessary administrative expenses of the Food and Nutrition Service for carrying out any domestic nutrition assistance program, \$147,801,000.

#### TITLE V

##### FOREIGN ASSISTANCE AND RELATED PROGRAMS

##### FOREIGN AGRICULTURAL SERVICE

##### SALARIES AND EXPENSES

##### (INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Foreign Agricultural Service, including not to exceed \$158,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), \$180,367,000: Provided, That the Service may utilize advances of funds, or reimburse this appropriation for expenditures made on behalf of Federal agencies, public and private organizations and institutions under agreements executed pursuant to the agricultural food production assistance programs (7 U.S.C. 1737) and the foreign assistance programs of the United States Agency for International Development: Provided further, That funds made available for middle-income country training programs and up to \$2,000,000 of the Foreign Agricultural Service appropriation solely for the purpose of offsetting fluctuations in international currency exchange rates, subject to documentation by the Foreign Agricultural Service, shall remain available until expended.

##### FOOD FOR PEACE TITLE I DIRECT CREDIT AND FOOD FOR PROGRESS PROGRAM ACCOUNT

##### (INCLUDING TRANSFERS OF FUNDS)

For administrative expenses to carry out the credit program of title I, Public Law 83-480 and the Food for Progress Act of 1985, \$2,812,000, shall be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses": Provided, That funds made available for the cost of agreements under title I of the Agricultural Trade Development and Assistance Act of 1954 and for title I ocean freight differential may be used interchangeably between the two accounts with prior notice to the Committees on Appropriations of both Houses of Congress.

##### FOOD FOR PEACE TITLE II GRANTS

For expenses during the current fiscal year, not otherwise recoverable, and unrecovered prior years' costs, including interest thereon, under the Food for Peace Act (Public Law 83-480, as amended), for commodities supplied in connection with dispositions abroad under title II of said Act, \$1,690,000,000, to remain available until expended.

##### COMMODITY CREDIT CORPORATION EXPORT LOANS PROGRAM ACCOUNT

##### (INCLUDING TRANSFERS OF FUNDS)

For administrative expenses to carry out the Commodity Credit Corporation's export guarantee program, GSM 102 and GSM 103, \$6,820,000; to cover common overhead expenses as permitted by section 11 of the Commodity Credit Corporation Charter Act and in conformity with the Federal Credit Reform Act of 1990, of which \$6,465,000 shall be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses", and of which \$355,000 shall be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses".

##### MC GOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM GRANTS

For necessary expenses to carry out the provisions of section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o-1), \$199,500,000, to remain available until expended: Provided, That of this amount, the Secretary shall use up to \$10,000,000 to conduct pilot projects to field test new and improved micro-nutrient fortified food products designed to meet energy and nutrient needs of program participants: Provided further, That the Commodity Credit Corporation is authorized to provide the services, facilities, and authorities for the purpose of implementing such section, subject to reimbursement from amounts provided herein.

#### TITLE VI

##### RELATED AGENCY AND FOOD AND DRUG ADMINISTRATION

##### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### FOOD AND DRUG ADMINISTRATION

##### SALARIES AND EXPENSES

For necessary expenses of the Food and Drug Administration, including hire and purchase of passenger motor vehicles; for payment of space rental and related costs pursuant to Public Law 92-313 for programs and activities of the Food and Drug Administration which are included in this Act; for rental of special purpose space in the District of Columbia or elsewhere; for miscellaneous and emergency expenses of enforcement activities, authorized and approved by the Secretary and to be accounted for solely on the Secretary's certificate, not to exceed \$25,000; and notwithstanding section 521 of Public Law 107-188; \$3,230,218,000: Provided, That of the amount provided under this heading, \$578,162,000 shall be derived from prescription drug user fees authorized by 21 U.S.C. 379h shall be credited to this account and remain available until expended, and shall not include any fees pursuant

to 21 U.S.C. 379h(a)(2) and (a)(3) assessed for fiscal year 2011 but collected in fiscal year 2010; \$57,014,000 shall be derived from medical device user fees authorized by 21 U.S.C. 379j, and shall be credited to this account and remain available until expended; \$17,280,000 shall be derived from animal drug user fees authorized by 21 U.S.C. 379j, and shall be credited to this account and remain available until expended; \$5,106,000 shall be derived from animal generic drug user fees authorized by 21 U.S.C. 379f, and shall be credited to this account and shall remain available until expended; and \$235,000,000 shall be derived from tobacco product user fees authorized by the Family Smoking Prevention and Tobacco Control Act (Public Law 111-31) and shall be credited to this account and remain available until expended: Provided further, That fees derived from prescription drug, medical device, animal drug, animal generic drug, and tobacco product assessments for fiscal year 2010 received during fiscal year 2010, including any such fees assessed prior to fiscal year 2010 but credited for fiscal year 2010, shall be subject to the fiscal year 2010 limitations: Provided further, That none of these funds shall be used to develop, establish, or operate any program of user fees authorized by 31 U.S.C. 9701: Provided further, That of the total amount appropriated: (1) \$782,915,000 shall be for the Center for Food Safety and Applied Nutrition and related field activities in the Office of Regulatory Affairs; (2) \$873,104,000 shall be for the Center for Drug Evaluation and Research and related field activities in the Office of Regulatory Affairs, of which no less than \$51,545,000 shall be available for the Office of Generic Drugs; (3) \$305,249,000 shall be for the Center for Biologics Evaluation and Research and for related field activities in the Office of Regulatory Affairs; (4) \$155,540,000 shall be for the Center for Veterinary Medicine and for related field activities in the Office of Regulatory Affairs; (5) \$349,262,000 shall be for the Center for Devices and Radiological Health and for related field activities in the Office of Regulatory Affairs; (6) \$58,745,000 shall be for the National Center for Toxicological Research; (7) \$216,523,000 shall be for the Center for Tobacco Products and for related field activities in the Office of Regulatory Affairs; (8) not to exceed \$117,225,000 shall be for Rent and Related activities, of which \$41,496,000 is for White Oak Consolidation, other than the amounts paid to the General Services Administration for rent; (9) not to exceed \$171,526,000 shall be for payments to the General Services Administration for rent; and (10) \$200,129,000 shall be for other activities, including the Office of the Commissioner; the Office of Scientific and Medical Programs; the Office of Policy, Planning and Preparedness; the Office of International and Special Programs; the Office of Operations; and central services for these offices: Provided further, That the Commissioner, through the Center for Food Safety and Applied Nutrition, may conduct a study and, not later than one year after the date of enactment of this Act, submit a report to Congress on the psychological, physiological, and neurological similarities between addiction to certain types of food and addiction to classic drugs of abuse: Provided further, That funds may be transferred from one specified activity to another with the prior notification of the Committees on Appropriations of both Houses of Congress.

In addition, mammography user fees authorized by 42 U.S.C. 263b, export certification user fees authorized by 21 U.S.C. 381, and priority review user fees authorized by 21 U.S.C. 360n may be credited to this account, to remain available until expended.

#### BUILDINGS AND FACILITIES

For plans, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of or used by the Food and Drug Administration, where not otherwise provided, \$12,433,000, to remain available until expended.

### INDEPENDENT AGENCY FARM CREDIT ADMINISTRATION

#### LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed \$54,500,000 (from assessments collected from farm credit institutions, including the Federal Agricultural Mortgage Corporation) shall be obligated during the current fiscal year for administrative expenses as authorized under 12 U.S.C. 2249: Provided, That this limitation shall not apply to expenses associated with receiverships.

### TITLE VII GENERAL PROVISIONS (INCLUDING RESCISSION)

SEC. 701. Within the unit limit of cost fixed by law, appropriations and authorizations made for the Department of Agriculture for the current fiscal year under this Act shall be available for the purchase, in addition to those specifically provided for, of not to exceed 204 passenger motor vehicles, of which 170 shall be for replacement only, and for the hire of such vehicles.

SEC. 702. Section 10101 of division B of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, (Public Law 110-329) is amended in subsection (b) by inserting at the end the following: "In carrying out this section, the Secretary may transfer funds into existing or new accounts as determined by the Secretary."

SEC. 703. The Secretary of Agriculture may transfer unobligated balances of discretionary funds appropriated by this Act or other available unobligated discretionary balances of the Department of Agriculture to the Working Capital Fund for the acquisition of plant and capital equipment necessary for the delivery of financial, administrative, and information technology services of primary benefit to the agencies of the Department of Agriculture: Provided, That none of the funds made available by this Act or any other Act shall be transferred to the Working Capital Fund without the prior notification of the agency administrator: Provided further, That none of the funds transferred to the Working Capital Fund pursuant to this section shall be available for obligation without the prior notification of the Committees on Appropriations of both Houses of Congress: Provided further, That none of the funds appropriated by this Act or made available to the Department's Working Capital Fund shall be available for obligation or expenditure to make any changes to the Department's National Finance Center without prior approval of the Committees on Appropriations of both Houses of Congress as required by section 712 of this Act: Provided further, That of annual income amounts in the Working Capital Fund of the Department of Agriculture allocated for the National Finance Center, the Secretary may reserve not more than 4 percent for the replacement or acquisition of capital equipment, including equipment for the improvement and implementation of a financial management plan, information technology, and other systems of the National Finance Center or to pay any unforeseen, extraordinary cost of the National Finance Center: Provided further, That none of the amounts reserved shall be available for obligation unless the Secretary submits notification of the obligation to the Committees on Appropriations of the House of Representatives and the Senate: Provided further, That the limitation on the obligation of funds pending notification to Congressional Committees shall not apply to any obligation that, as determined by the Secretary, is necessary to respond to a declared state of emergency that significantly impacts the operations of the National Finance Center; or to evacuate employees of the National Finance Center to a safe haven to continue operations of the National Finance Center.

SEC. 704. No part of any appropriation contained in this Act shall remain available for ob-

ligation beyond the current fiscal year unless expressly so provided herein.

SEC. 705. No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties: Provided, That this does not preclude appropriate payment of indirect costs on grants and contracts with such institutions when such indirect costs are computed on a similar basis for all agencies for which appropriations are provided in this Act.

SEC. 706. Appropriations to the Department of Agriculture for the cost of direct and guaranteed loans made available in the current fiscal year shall remain available until expended to disburse obligations made in the current fiscal year for the following accounts: the Rural Development Loan Fund program account, the Rural Electrification and Telecommunication Loans program account, and the Rural Housing Insurance Fund program account.

SEC. 707. Of the funds made available by this Act, not more than \$1,800,000 shall be used to cover necessary expenses of activities related to all advisory committees, panels, commissions, and task forces of the Department of Agriculture, except for panels used to comply with negotiated rule makings and panels used to evaluate competitively awarded grants.

SEC. 708. Hereafter, none of the funds appropriated by this Act or any other Act may be used to carry out section 410 of the Federal Meat Inspection Act (21 U.S.C. 679a) or section 30 of the Poultry Products Inspection Act (21 U.S.C. 471).

SEC. 709. No employee of the Department of Agriculture may be detailed or assigned from an agency or office funded by this Act or any other Act to any other agency or office of the Department for more than 30 days unless the individual's employing agency or office is fully reimbursed by the receiving agency or office for the salary and expenses of the employee for the period of assignment.

SEC. 710. None of the funds appropriated or otherwise made available to the Department of Agriculture or the Food and Drug Administration shall be used to transmit or otherwise make available to any non-Department of Agriculture or non-Department of Health and Human Services employee questions or responses to questions that are a result of information requested for the appropriations hearing process.

SEC. 711. None of the funds made available to the Department of Agriculture by this Act may be used to acquire new information technology systems or significant upgrades, as determined by the Office of the Chief Information Officer, without the approval of the Chief Information Officer and the concurrence of the Executive Information Technology Investment Review Board: Provided, That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by this Act may be transferred to the Office of the Chief Information Officer unless prior notification has been transmitted to the Committees on Appropriations of both Houses of Congress: Provided further, That none of the funds available to the Department of Agriculture for information technology shall be obligated for projects over \$25,000 prior to receipt of written approval by the Chief Information Officer.

SEC. 712. (a) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds which—

(1) creates new programs;  
 (2) eliminates a program, project, or activity;  
 (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;  
 (4) relocates an office or employees;  
 (5) reorganizes offices, programs, or activities;  
 or

(6) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$500,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(c) The Secretary of Agriculture or the Secretary of Health and Human Services shall notify the Committees on Appropriations of both Houses of Congress before implementing a program or activity not carried out during the previous fiscal year unless the program or activity is funded by this Act or specifically funded by any other Act.

SEC. 713. None of the funds appropriated by this or any other Act shall be used to pay the salaries and expenses of personnel who prepare or submit appropriations language as part of the President's Budget submission to the Congress of the United States for programs under the jurisdiction of the Appropriations Subcommittees on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies that assumes revenues or reflects a reduction from the previous year due to user fees proposals that have not been enacted into law prior to the submission of the Budget unless such Budget submission identifies which additional spending reductions should occur in the event the user fees proposals are not enacted prior to the date of the convening of a committee of conference for the fiscal year 2011 appropriations Act.

SEC. 714. None of the funds made available by this or any other Act may be used to close or relocate a Rural Development office unless or until the Secretary of Agriculture determines the cost effectiveness and/or enhancement of program delivery: Provided, That not later than 120 days before the date of the proposed closure or relocation, the Secretary notifies the Committees on Appropriation of the House and Senate, and the members of Congress from the State in which the office is located of the proposed closure or relocation and provides a report that describes the justifications for such closures and relocations.

SEC. 715. None of the funds made available to the Food and Drug Administration by this Act shall be used to close or relocate, or to plan to close or relocate, the Food and Drug Administration Division of Pharmaceutical Analysis in St. Louis, Missouri, outside the city or county limits of St. Louis, Missouri.

SEC. 716. There is hereby appropriated \$499,000 for any authorized Rural Development program purpose, in communities suffering from extreme outmigration and situated in areas that

were designated as part of an Empowerment Zone pursuant to section 111 of the Community Renewal Tax Relief Act of 2000 (as contained in appendix G of Public Law 106-554).

SEC. 717. None of the funds made available in fiscal year 2010 or preceding fiscal years for programs authorized under the Food for Peace Act (7 U.S.C. 1691 et seq.) in excess of \$20,000,000 shall be used to reimburse the Commodity Credit Corporation for the release of eligible commodities under section 302(f)(2)(A) of the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f-1): Provided, That any such funds made available to reimburse the Commodity Credit Corporation shall only be used pursuant to section 302(b)(2)(B)(i) of the Bill Emerson Humanitarian Trust Act.

SEC. 718. There is hereby appropriated \$3,497,000, to remain available until expended, for a grant to the National Center for Natural Products Research for construction or renovation to carry out the research objectives of the natural products research grant issued by the Food and Drug Administration.

SEC. 719. Funds made available under section 1240I and section 1241(a) of the Food Security Act of 1985 and section 524(b) of the Federal Crop Insurance Act (7 U.S.C. 1524(b)) in the current fiscal year shall remain available until expended to disburse obligations made in the current fiscal year.

SEC. 720. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out the following:

(1) An Environmental Quality Incentives Program as authorized by sections 1241-240H of the Food Security Act of 1985, as amended (16 U.S.C. 3839aa-3839aa(8)), in excess of \$1,180,000,000.

(2) a program authorized by section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)).

(3) a program under subsection (b)(2)(A)(ii) of section 14222 of Public Law 110-246 in excess of \$1,123,000,000: Provided, That none of the funds made available in this Act or any other Act shall be used for salaries and expenses to carry out section 19(i)(1)(C) of the Richard B. Russell National School Lunch Act as amended by section 4304 of Public Law 110-246 in excess of \$25,000,000 until October 1, 2010: Provided further, That the unobligated balances under section 32 of the Act of August 24, 1935, \$52,000,000 are hereby rescinded.

SEC. 721. Hereafter, notwithstanding any other provision of law, any former RUS borrower that has repaid or prepaid an insured, direct or guaranteed loan under the Rural Electrification Act, or any not-for-profit utility that is eligible to receive an insured or direct loan under such Act, shall be eligible for assistance under section 313(b)(2)(B) of such Act in the same manner as a borrower under such Act.

SEC. 722. There is hereby appropriated \$2,600,000, to remain available until expended, for the planning and design of construction of an agricultural pest facility in the State of Hawaii.

SEC. 723. There is hereby appropriated \$4,000,000 to the Secretary of Agriculture to award grant(s) to develop and field test new food products designed to improve the nutritional delivery of humanitarian food assistance provided through the McGovern-Dole (section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o-1)) and the Food for Peace title II (7 U.S.C. 1691 et seq.) programs: Provided, That the Secretary shall use the authorities provided under the Research, Education, and Economics mission area of the Department in awarding such grant(s), with priority given to proposals that demonstrate partnering with and in-kind support from the private sector.

SEC. 724. The Rural Utilities Service, Rural Housing Service, and Rural Business and Cooperative Service shall permit an applicant to so-

licit and procure professional services and have prepared all environmental reviews, assessments, and impact statements: Provided, That such professional services will be funded by the applicants and selected by the agencies from procurement schedules of contractors determined qualified to perform said services: Provided further, That the Agencies shall establish the scope of work and procedures for such services as well as procedures to assure contractors have no financial or other conflicts of interest in the outcome of the action and the documentation meets the needs of the Agencies: Provided further, That nothing herein shall affect the responsibility of the Agencies to comply with the National Environmental Policy Act.

SEC. 725. Notwithstanding any other provision of law, and until receipt of the decennial Census for the year 2010, the Secretary of Agriculture shall consider—

(1) The unincorporated community of Los Osos, in the County of San Luis Obispo, California, to be a rural area for the purposes of eligibility for Rural Utilities Service water and waste disposal loans and grants; and

(2) The unincorporated community of Thermalito in Butte County, California, (including individuals and entities with projects within the community) eligible for loans and grants funded under the housing programs of the Rural Housing Service.

SEC. 726. There is hereby appropriated \$3,000,000 for section 4404 of Public Law 107-171.

SEC. 727. Notwithstanding any other provision of law, there is hereby appropriated:

(1) \$3,000,000 of which \$2,000,000 shall be for a grant to the Wisconsin Department of Agriculture, Trade, and Consumer Protection, and \$1,000,000 shall be for a grant to the Vermont Agency of Agriculture, Foods, and Markets, as authorized by section 6402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1621 note); and

(2) \$350,000 for a grant to the Wisconsin Department of Agriculture, Trade and Consumer Protection.

SEC. 728. Notwithstanding any other provision of law, the Natural Resources Conservation Service shall provide financial and technical assistance—

(1) through the Watershed and Flood Prevention Operations program for the Pocasset River Floodplain Management Project in the State of Rhode Island;

(2) through the Watershed and Flood Prevention Operations program to carry out the East Locust Creek Watershed Plan Revision in Missouri, including up to 100 percent of the engineering assistance and 75 percent cost share for construction cost of site RWI;

(3) through the Watershed and Flood Prevention Operations program to carry out the Little Otter Creek Watershed project in Missouri. The sponsoring local organization may obtain land rights by perpetual easements;

(4) through the Watershed and Flood Prevention Operations program to carry out the DuPage County Watershed project in the State of Illinois;

(5) through the Watershed and Flood Prevention Operations program to carry out the Dunloup Creek Watershed Project in Fayette and Raleigh Counties, West Virginia;

(6) through the Watershed and Flood Prevention Operations program to carry out the Dry Creek Watershed project in the State of California; and

(7) through the Watershed and Flood Prevention Operations program to carry out the Upper Clark Fork Watershed project in the State of Montana.

SEC. 729. Section 17(r)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)(5)) is amended—

(1) by striking "ten" and inserting "eleven";  
 (2) by striking "eight" and inserting "nine";  
 and

(3) by inserting "Wisconsin," after the first instance of "States shall be".

SEC. 730. Notwithstanding any other provision of law, for the purposes of a grant under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998, none of the funds in this or any other Act may be used to prohibit the provision of in-kind support from non-Federal sources under section 412(e)(3) in the form of unrecovered indirect costs not otherwise charged against the grant, consistent with the indirect rate of cost approved for a recipient.

SEC. 731. Except as otherwise specifically provided by law, unobligated balances remaining available at the end of the fiscal year from appropriations made available for salaries and expenses in this Act for the Farm Service Agency and the Rural Development mission area, shall remain available through September 30, 2011, for information technology expenses.

SEC. 732. (a) CHILD NUTRITION PROGRAMS.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end the following:

“(14) COMBAT PAY.—

“(A) DEFINITION OF COMBAT PAY.—In this paragraph, the term ‘combat pay’ means any additional payment under chapter 5 of title 37, United States Code, or otherwise designated by the Secretary to be appropriate for exclusion under this paragraph, that is received by or from a member of the United States Armed Forces deployed to a designated combat zone, if the additional pay—

“(i) is the result of deployment to or service in a combat zone; and

“(ii) was not received immediately prior to serving in a combat zone.

“(B) EXCLUSION.—Combat pay shall not be considered to be income for the purpose of determining the eligibility for free or reduced price meals of a child who is a member of the household of a member of the United States Armed Forces.”.

(b) SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.—Section 17(d)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

“(C) COMBAT PAY.—For the purpose of determining income eligibility under this section, a State agency shall exclude from income any additional payment under chapter 5 of title 37, United States Code, or otherwise designated by the Secretary to be appropriate for exclusion under this subparagraph, that is received by or from a member of the United States Armed Forces deployed to a designated combat zone, if the additional pay—

“(i) is the result of deployment to or service in a combat zone; and

“(ii) was not received immediately prior to serving in a combat zone.”.

SEC. 733. (a) Section 531(g)(7)(F) of the Federal Crop Insurance Act (7 U.S.C. 1531(g)(7)(F)) is amended—

(1) in the matter preceding clause (i), by inserting “(including multiyear assistance)” after “assistance”; and

(2) in clause (i), by inserting “or multiyear production losses” after “a production loss”.

(b) Section 901(g)(7)(F) of the Trade Act of 1974 (19 U.S.C. 2497(g)(7)(F)) is amended—

(1) in the matter preceding clause (i), by inserting “(including multiyear assistance)” after “assistance”; and

(2) in clause (i), by inserting “or multiyear production losses” after “a production loss”.

SEC. 734. Notwithstanding section 17(g)(5) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(5)), not more than \$15,000,000 of funds provided in this Act may be used for the purpose of evaluating program performance in the Special Supplemental Nutrition Program for Women, Infants and Children.

SEC. 735. Notwithstanding section 17(h)(10)(A) of the Child Nutrition Act of 1966 (42 U.S.C.

1786(h)(10)(A)), \$154,000,000 of funds provided in this Act shall be used for infrastructure, management information systems and breastfeeding peer counseling support: Provided, That of the \$154,000,000, not less than \$14,000,000 shall be used for infrastructure, not less than \$60,000,000 shall be used for management information systems, and not less than \$80,000,000 shall be used for breastfeeding peer counselors and other related activities.

SEC. 736. Agencies with jurisdiction for carrying out international food assistance programs under the jurisdiction of this Act, including title II of the Food for Peace Act and the McGovern-Dole International Food for Education Program, shall—

(1) provide to the Committees on Appropriations of the House and the Senate no later than March 1, 2010, the following:

(A) estimates on cost-savings and programmatic efficiencies that would result from increased use of pre-positioning of food aid commodities and processes to ensure such cargoes are appropriately maintained to prevent spoilage;

(B) estimates on cost-savings and programmatic efficiencies that would result from the use of longer-term commodity procurement contracts, the proportional distribution of commodity purchases throughout the fiscal year, longer-term shipping contracts, contracts which include shared-risk principles, and adoptions of other commercially acceptable contracting practices;

(C) estimates on costs of domestic procurement of commodities, domestic inland transportation of food aid commodities, domestic storage (including loading and unloading), foreign storage (including loading and unloading), foreign inland transportation, and ocean freight (including ocean freight as adjusted by the ocean freight differential reimbursement provided by the Secretary of Transportation), and costs relating to allocation and distribution of commodities in recipient countries;

(D) information on the frequency of delays in transporting food aid commodities, the cause or purpose of any delays (including how those delays are tracked, monitored and resolved), missed schedules by carriers and non-carriers (and resulting program costs due to such delays, including impacts to program beneficiaries);

(E) information on the methodologies to improve interagency coordination between host governments, the World Food Program, and non-governmental organization to develop more consistent estimates of food aid needs and the number of intended recipients to appropriately inform the purchases of commodities and in order to appropriately plan for commodity procurement for food aid programs;

(2) provide the matter described under subsection (1) of this section in the form of a consensus report under the signatures of the Secretaries of Agriculture, State, and Transportation; and

(3) estimates and cost savings analysis for this section shall be derived from periods representative of normal program operations.

SEC. 737. There is hereby appropriated \$7,000,000 to carry out section 4202 of Public Law 110–246.

SEC. 738. There is hereby appropriated \$2,600,000 to carry out section 1621 of Public Law 110–246.

SEC. 739. There is hereby appropriated \$4,000,000 to carry out section 1613 of Public Law 110–246.

SEC. 740. There is hereby appropriated \$250,000, to remain available until expended, for a grant to the Kansas Farm Bureau Foundation for work-force development initiatives to address out-migration in rural areas.

SEC. 741. There is hereby appropriated \$800,000 to the Farm Service Agency to carry out a pilot program to demonstrate the use of new technologies that increase the rate of growth of re-forested hardwood trees on private non-in-

dustrial forests lands, enrolling lands on the coast of the Gulf of Mexico that were damaged by Hurricane Katrina in 2005.

SEC. 742. Applicants with very low, low, and moderate incomes shall be eligible for the program established in section 791 of Public Law 109–97.

SEC. 743. The Secretary of Agriculture may authorize a State agency to use funds provided in this Act to exceed the maximum amount of re-constituted infant formula specified in 7 C.F.R. 246.10 when issuing infant formula to participants. Such authorizations shall not otherwise impact the eligibility of manufacturers to remain eligible under the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966.

SEC. 744. None of the funds made available by this Act may be used to establish or implement a rule allowing poultry products to be imported into the United States from the People's Republic of China unless the Secretary of Agriculture formally commits in advance to conduct audits of inspection systems, on-site reviews of slaughter and processing facilities, laboratories and other control operations before any Chinese facilities are certified as eligible to ship fully cooked poultry products to the United States, and at least once annually in subsequent years: Provided, That the Secretary commits in advance to implement a significantly increased level of port of entry re-inspection: Provided further, That the Secretary commits in advance to conduct information sharing with other countries importing poultry products from China that have conducted audits and plant inspections: Provided further, That this section shall be applied in a manner consistent with United States obligations under international trade agreements.

SEC. 745. (a) The Commissioner of Food and Drugs may establish within the Food and Drug Administration a review group which shall recommend to the Commissioner of Food and Drugs appropriate preclinical, trial design, and regulatory paradigms and optimal solutions for the prevention, diagnosis, and treatment of rare diseases: Provided, That the Commissioner of Food and Drugs shall appoint 8 individuals employed by the Food and Drug Administration to serve on the review group: Provided further, That members of the review group shall have specific expertise relating to the development of articles for use in the prevention, diagnosis, or treatment of rare diseases, including specific expertise in developing or carrying out clinical trials.

(b) The Commissioner of Food and Drugs may establish within the Food and Drug Administration a review group which shall recommend to the Commissioner of Food and Drugs appropriate preclinical, trial design, and regulatory paradigms and optimal solutions for the prevention, diagnosis, and treatment of neglected diseases of the developing world: Provided, That the Commissioner of Food and Drugs shall appoint 8 individuals employed by the Food and Drug Administration to serve on the review group: Provided further, That members of the review group shall have specific expertise relating to the development of articles for use in the prevention, diagnosis, or treatment of neglected diseases of the developing world, including specific expertise in developing or carrying out clinical trials: Provided further, That for the purposes of this section the term “neglected disease of the developing world” means a tropical disease, as defined in section 524(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360n(a)(3)).

(c) The Commissioner of Food and Drugs shall—

(1) submit, not later than 1 year after the date of the establishment of review groups under subsections (a) and (b), a report to Congress that describes both the findings and recommendations made by the review groups under subsections (a) and (b);

(2) issue, not later than 180 days after submission of the report to Congress under paragraph (1), guidance based on such recommendations for articles for use in the prevention, diagnosis, and treatment of rare diseases and for such uses in neglected diseases of the developing world; and

(3) develop, not later than 180 days after submission of the report to Congress under paragraph (1), internal review standards based on such recommendations for articles for use in the prevention, diagnosis, and treatment of rare diseases and for such uses in neglected diseases of the developing world.

SEC. 746. Not later than 60 days after the date of enactment of this Act, the Administrator of the Foreign Agricultural Service shall submit to Congress a report that describes the status of the reorganization of the Foreign Agricultural Service and any future plans of the Administrator to modify office structures to meet existing, emerging, and new priorities.

SEC. 747. None of the funds made available by this Act may be used to pay the salaries and expenses of any employee of the Department of Agriculture to assess any agency any greenbook charge or to use any funds acquired through an assessment of greenbook charges made prior to the date of enactment of this Act.

SEC. 748. The Commissioner of Food and Drugs, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, shall conduct a study and, not later than 240 days after the date of enactment of this Act, submit a report to Congress on the technical challenges associated with inspecting imported seafood. The study and report shall—

(1) provide information on the status of seafood importation, including—

(A) the volume of seafood imported into the United States annually, by product and country of origin;

(B) the number of physical inspections of imported seafood products conducted annually, by product and country of origin; and

(C) a listing of the United States ports of entry for seafood imports by volume;

(2) provide information on imported seafood products, by product and country of origin, that do not meet standards as set forth in the applicable food importation law, including the reason for which each such product does not meet such standards;

(3) identify the fish, crayfish, shellfish, and other sea species most susceptible to violations of the applicable food importation law;

(4) identify the aquaculture and mariculture practices that are of greatest concern to human health; and

(5) suggest methods for improving import inspection policies and procedures to protect consumers in the United States.

SEC. 749. (a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States, shall report to the Committees on Appropriations of the House of Representatives and of the Senate on developing the tourism potential of rural communities.

(b) CONTENT OF THE REPORT.—The report required by subsection (a) shall—

(1) identify existing Federal programs that provide assistance to rural small businesses in developing tourism marketing and promotion plans relating to tourism in rural areas;

(2) identify existing Federal programs that assist rural small business concerns in obtaining capital for starting or expanding businesses primarily serving tourists; and

(3) include recommendations, if any, for improving existing programs or creating new Federal programs that may benefit tourism in rural communities.

SEC. 750. Notwithstanding any other provision of law and until the receipt of the decennial census in the year 2010, the Secretary of Agriculture may fund community facility and water and waste disposal projects of communities and

municipal districts and areas in Connecticut, Massachusetts, and Rhode Island that filed applications for the projects with the appropriate rural development field office of the Department of Agriculture prior to August 1, 2009, and were determined by the field office to be eligible for funding.

SEC. 751. (a) The Senate finds that—

(1) sudden loss in late 2008 of export-market based demand equivalent to about 3 percent of domestic milk production has thrown the U.S. dairy industry into a critical supply-demand imbalance;

(2) an abrupt decline in U.S. exports was fueled by the onset of the global economic crisis combined with resurgence of milk supplies in Oceania;

(3) the U.S. average all-milk price reported by the National Agriculture Statistics Service from January through May of 2009, has averaged \$4.80 per hundredweight below the cost of production;

(4) approximately \$3,900,000,000 in dairy producer equity has been lost since January;

(5) anecdotal evidence suggests that U.S. dairy producers are losing upwards of \$100 per cow per month;

(6) the Food, Conservation, and Energy Act of 2008 extended the counter-cyclical Milk Income Loss Contract (MILC) support program and instituted a ‘feed cost adjuster’ to augment that support;

(7) the Secretary of Agriculture in March transferred approximately 200,000,000 pounds of nonfat dry milk to USDA’s Food and Nutrition Service in a move designed to remove inventory from the market and support low-income families;

(8) the Secretary on March 22nd reactivated USDA’s Dairy Export Incentive Program (DEIP) to help U.S. producers meet prevailing world prices and develop international markets;

(9) the Secretary announced on July 31, 2009 a temporary increase in the amount paid for dairy products through the Dairy Product Price Support Program (DPPSP), an adjustment that is projected to increase dairy farmers’ revenue by \$243,000,000; and

(10) U.S. dairy producers face unprecedented challenges that threaten the stability of the industry, the nation’s milk production infrastructure, and thousands of rural communities.

(b) The Senate states that the Secretary of Agriculture and the President’s Office of Management and Budget should continue to closely monitor the U.S. dairy sector and use all available discretionary authority to ensure its long-term health and sustainability.

SEC. 752. (a) The Commissioner of Food and Drugs, in consultation with the Secretary of Agriculture, may conduct a study on the labeling of personal care products regulated by the Food and Drug Administration for which organic content claims are made. Any such study shall include—

(1) a survey of personal care products for which the word “organic” appears on the label; and

(2) a determination, based on statistical sampling of the products identified under paragraph (1), of the accuracy of such claims.

(b) If the Commissioner of Food and Drugs conducts a study described in subsection (a), such Commissioner shall—

(1) not later than 270 days after the date of enactment of this Act, submit to the Committees on Agriculture, Nutrition, and Forestry, Appropriations, and Health, Education, Labor, and Pensions in the Senate and the Committees on Agriculture, Appropriations, and Energy and Commerce in the House of Representatives a report on the findings of the study under subsection (a); and

(2) provide such Committees with any recommendations on the need to establish labeling standards for personal care products for which organic content claims are made, including whether the Food and Drug Administration

should have pre-market approval authority for personal care product labeling.

SEC. 753. (a) The Senate finds that—

(1) agriculture is a national security concern;

(2) the United States suffers from periodic disasters which affects the food and fiber supply of the United States;

(3) the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8701 et seq.) established 5 permanent disaster programs to deliver timely and immediate assistance to agricultural producers recovering from losses;

(4) as of the date of enactment of this Act, of those 5 disaster programs—

(A) none are available, finalized, and implemented to deliver urgently needed assistance for 2009 producer losses; and

(B) only 1 is being implemented for 2008 losses;

(5) according to the Drought Monitor, the State of Texas is suffering from extreme and exceptional drought conditions, the highest level of severity; and

(6) the Secretary of Agriculture has previously authorized various forms of disaster assistance by providing funding under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), and through the Commodity Credit Corporation.

(b) It is the sense of the Senate that the Secretary of Agriculture should use all of the discretionary authority available to the Secretary to make available immediate relief and assistance for agricultural producers suffering losses as a result of the 2009 droughts.

SEC. 754. (a) The Senate finds that—

(1) with livestock producers facing losses from harsh weather in 2008 and continuing to face disasters in 2009, Congress wanted to assist livestock producers in recovering losses more quickly and efficiently than previous ad hoc disaster assistance programs;

(2) on June 18, 2008, Congress established the livestock indemnity program under section 531(c) of the Federal Crop Insurance Act (7 U.S.C. 1531(c)) and section 901(c) of the Trade Act of 1974 (19 U.S.C. 2497(c)) as a permanent disaster assistance program to provide livestock producers with payments of 75 percent of the fair market value for livestock losses as a result of adverse weather such as floods, blizzards, and extreme heat;

(3) on July 13, 2009, the Secretary of Agriculture promulgated rules for the livestock indemnity program that separated non adult beef animals into weight ranges of “less than 400 pounds” and “400 pounds and more”; and

(4) the “400 pounds and more” range would fall well short of covering 75 percent market value payment for livestock in these higher ranges that are close to market weight.

(b) It is the sense of the Senate that the Secretary of Agriculture—

(1) should strive to establish a methodology to calculate more specific payments to offset the cost of loss for each animal as was intended by Congress for calendar years 2008 through 2011; and

(2) should work with groups representing affected livestock producers to come up with this more precise methodology.

This Act may be cited as the “Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010”.

## UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, first of all, let me say this. This has taken a lot of time today. Senator MCCONNELL and I have had many meetings and many discussions. This whole consent agreement has been very difficult for everyone, but I think it accomplishes what we need to accomplish.

Mr. President, I ask unanimous consent that tomorrow, Thursday, August

6, at 10 a.m., the Senate proceed to executive session to resume consideration of Executive Calendar No. 309, the nomination of Sonia Sotomayor to be an Associate Justice of the Supreme Court, and that the time until 2 p.m. be divided equally in alternating 1-hour blocks with the Republicans controlling the first hour; that at 2 p.m. the time be divided 15 minutes each as follows: Senator SESSIONS, Senator LEAHY, Senator MCCONNELL and Senator REID, in that order; that at 3 p.m., without further intervening action or debate, the Senate proceed to vote on confirmation of the nomination of Sonia Sotomayor; that upon confirmation, the motion to reconsider be laid upon the table, no further motions be in order, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

#### UNANIMOUS CONSENT AGREEMENT—H.R. 3435 AND S. 1023

Mr. REID. Mr. President, I further ask unanimous consent that upon disposition of the nomination of Justice Sotomayor and the Senate resuming legislative session, the Senate then proceed to consideration of Calendar No. 146, H.R. 3435; that the bill be considered under the following limitations; that each amendment be debated for a period of 30 minutes, equally divided and controlled in the usual form; that if there is a sequence of votes, then prior to each vote there be 2 minutes of debate, equally divided and controlled in the usual form; that after the first vote in a sequence, the remaining votes be limited to 10 minutes each: Harkin amendment regarding income limits, the Kyl amendment regarding status report substitute, the Gregg amendment regarding the budget resolution, the Vitter amendment regarding termination of TARP, the Coburn amendment regarding donations, the Thune amendment regarding government ownership plan, and the Isakson amendment regarding home purchases; that once the agreement is entered, the amendments be filed at the desk and printed in the RECORD; further, that upon disposition of the listed amendments, the bill be read a third time, the Senate proceed to vote on passage of the bill; provided further that on Tuesday, September 8, at 5:30 p.m., the Senate proceed to the motion to reconsider the vote by which cloture was not invoked on the Dorgan amendment No. 1347 to S. 1025, the Travel Promotion Act, and that the motion to proceed be agreed to, and the Senate then vote on the motion to invoke cloture on the Dorgan amendment; that if cloture is invoked on the amendment, then postcloture time be considered to have begun running at 10:30 a.m., Tuesday, September 8.

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

Mr. REID. Mr. President, on the final paragraph of my consent agreement, where I said that the Senate proceed to the motion to reconsider the vote by which cloture was not invoked on the Dorgan amendment No. 1347 to S. 1025, it should be S. 1023.

And Mr. President, the record should be very clear that the vote we take Monday night on the Travel Promotion Act is only on cloture. The 30 hours would still run and we would have to have final passage on the bill whenever the 30 hours runs out or whenever there is an agreement that we can vote on it.

So Mr. President, I further ask unanimous consent that after the 30 hours is up, at the end of postcloture time, the amendment be agreed to, and the bill be read a third time and the Senate vote on passage of the legislation.

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

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### FEMA ACCOUNTABILITY ACT OF 2009

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 69, S. 713.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 713) to require the administrator of the Federal Emergency Management Agency to quickly and fairly address the abundance of surplus manufactured housing units stored by the Federal Government around the country at taxpayer expense.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment; as follows:

(The part of the bill intended to be stricken is shown in boldface brackets and the part of the bill intended to be inserted is shown in italic.)

S. 713

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

#### SECTION 1. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the “FEMA Accountability Act of 2009”.

(b) DEFINITIONS.—In this Act—

(1) the term “Administrator” means the Administrator of FEMA;

(2) the terms “emergency” and “major disaster” have the meanings given such terms in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122); and

(3) the term “FEMA” means the Federal Emergency Management Agency.

#### SEC. 2. TRANSFER, STORAGE, SALE, AND DISPOSAL OF HOUSING UNITS.

(a) IN GENERAL.—Not later than 3 months after the date of enactment of this Act, the Administrator shall—

(1) complete an assessment to determine the number of temporary housing units purchased by FEMA that FEMA needs to maintain in stock to respond appropriately to emergencies or major disasters occurring after the date of enactment of this Act; and

(2) establish criteria for determining whether the individual temporary housing units stored by FEMA are in usable condition, which shall include appropriate criteria for formaldehyde testing and exposure of the individual temporary housing units.

(b) PLAN.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator shall establish a plan for—

(A) storing the number of temporary housing units that the Administrator has determined under subsection (a)(1) that FEMA needs to maintain in stock;

(B) transferring, selling, or otherwise disposing of the temporary housing units in the inventory of FEMA that—

(i) are in excess of the number of temporary housing units that the Administrator has determined under subsection (a)(1) that FEMA needs to maintain in stock; and

(ii) are in usable condition, based on the criteria established under subsection (a)(2); and

(C) disposing of the temporary housing units in the inventory of FEMA that the Administrator determines are not in usable condition, based on the criteria established under subsection (a)(2).

(2) APPLICABILITY OF DISPOSAL REQUIREMENTS.—The plan established under paragraph (1) shall be subject to the requirements of section 408(d)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174(d)(2)) and other applicable provisions of law.

(c) IMPLEMENTATION.—Not later than 9 months after the date of enactment of this Act, the Administrator shall implement the plan described in subsection (b).

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to the appropriate committees of the Senate and the House of Representatives a report on the status of the transfer, distribution, sale, or other disposal of [the unused temporary housing units purchased by FEMA.] temporary housing units under this section.

Mr. WARNER. Mr. President, I ask unanimous consent that the committee-reported amendment be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related thereto be printed in the RECORD.

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

The Committee amendment was agreed to.

The bill (S. 713), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 713

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

#### SECTION 1. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the “FEMA Accountability Act of 2009”.

(b) DEFINITIONS.—In this Act—

(1) the term “Administrator” means the Administrator of FEMA;



(2) the terms “emergency” and “major disaster” have the meanings given such terms in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122); and

(3) the term “FEMA” means the Federal Emergency Management Agency.

## SEC. 2. TRANSFER, STORAGE, SALE, AND DISPOSAL OF HOUSING UNITS.

(a) IN GENERAL.—Not later than 3 months after the date of enactment of this Act, the Administrator shall—

(1) complete an assessment to determine the number of temporary housing units purchased by FEMA that FEMA needs to maintain in stock to respond appropriately to emergencies or major disasters occurring after the date of enactment of this Act; and

(2) establish criteria for determining whether the individual temporary housing units stored by FEMA are in usable condition, which shall include appropriate criteria for formaldehyde testing and exposure of the individual temporary housing units.

(b) PLAN.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator shall establish a plan for—

(A) storing the number of temporary housing units that the Administrator has determined under subsection (a)(1) that FEMA needs to maintain in stock;

(B) transferring, selling, or otherwise disposing of the temporary housing units in the inventory of FEMA that—

(i) are in excess of the number of temporary housing units that the Administrator has determined under subsection (a)(1) that FEMA needs to maintain in stock; and

(ii) are in usable condition, based on the criteria established under subsection (a)(2); and

(C) disposing of the temporary housing units in the inventory of FEMA that the Administrator determines are not in usable condition, based on the criteria established under subsection (a)(2).

(2) APPLICABILITY OF DISPOSAL REQUIREMENTS.—The plan established under paragraph (1) shall be subject to the requirements of section 408(d)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174(d)(2)) and other applicable provisions of law.

(c) IMPLEMENTATION.—Not later than 9 months after the date of enactment of this Act, the Administrator shall implement the plan described in subsection (b).

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to the appropriate committees of the Senate and the House of Representatives a report on the status of the transfer, distribution, sale, or other disposal of temporary housing units under this section.

## THE CALENDAR

Mr. WARNER. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of calendar items Nos. 150 and 151, H.R. 1275 and H.R. 2938, en bloc.

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

Mr. WARNER. I ask unanimous consent that the bills be read a third time and passed en bloc, the motions to reconsider be laid upon the table en bloc, with no intervening action or debate, and any statements related to the bills be printed in the RECORD.

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

## UTAH RECREATIONAL LAND EXCHANGE ACT OF 2009

The bill (H.R. 1275), to direct the exchange of certain land in Grand, San Juan, and Uintah Counties, Utah, and for other purposes, was ordered to a third reading, was read the third time, and passed.

## EXTENDING DEADLINE FOR COMMENCEMENT OF CONSTRUCTION OF HYDROELECTRIC PROJECT

The bill (H.R. 2938), to extend the deadline for commencement of construction of a hydroelectric project, was read the third time, and passed.

## AUTHORIZING USE OF THE CAPITOL GROUNDS

Mr. WARNER. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H. Con. Res. 171, at the desk, and just received from the House.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 171) authorizing the use of the Capitol Grounds for an event to honor military personnel who have died in service to the United States and to acknowledge the sacrifice of the families of those individuals as part of the National Weekend of Remembrance.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. WARNER. I ask unanimous consent the concurrent resolution be agreed to and the motion to reconsider be laid upon the table and any statements be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 171) was agreed to.

## GOSPEL MUSIC HERITAGE MONTH

Mr. WARNER. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of S. Res. 226 and the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 226) designating September 2009 as “Gospel Music Heritage Month” and honoring gospel music for its valuable contributions to the culture of the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WARNER. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 226) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 226

Whereas gospel music is a beloved art form of the United States;

Whereas gospel music is a cornerstone of the musical traditions of the United States and has spread beyond origins in African-American spirituals to achieve popular cultural and historical relevance;

Whereas gospel music has spread beyond geographic origins in the United States to touch audiences around the world; and

Whereas gospel music is a testament to the universal appeal of a historical art form of the United States that both inspires and entertains across racial, ethnic, religious, and geographical boundaries: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates September 2009 as “Gospel Music Heritage Month”; and

(2) recognizes the valuable contributions to the culture of the United States derived from the rich heritage of gospel music and gospel music artists.

## COMMEMORATING THE 45TH ANNIVERSARY OF THE WILDERNESS ACT

Mr. WARNER. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 244, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 244) commemorating the 45th anniversary of the Wilderness Act.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WARNER. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 244) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 244

Whereas September 3, 2009, will mark the 45th anniversary of the date of enactment of the Wilderness Act (16 U.S.C. 1131 et seq.), which gave to the people of the United States the National Wilderness Preservation System, an enduring resource of natural heritage;

Whereas great writers of the United States, including Ralph Waldo Emerson, Henry David Thoreau, Willa Cather, George Perkins Marsh, Mary Hunter Austin, and John Muir, poets such as William Cullen Bryant, and painters such as Thomas Cole, Frederic Church, Frederic Remington, Georgia O'Keefe, Albert Bierstadt, and Thomas Moran, have defined the distinct cultural value of wild nature and unique concept of wilderness in the United States;

Whereas national leaders, such as former President Theodore Roosevelt, reveled in outdoor pursuits and diligently sought to preserve opportunities to mold individual character, to shape the destiny of the Nation, to strive for balance, and to ensure the wisest use of natural resources, so as to provide the greatest good for the greatest number of people as possible;

Whereas luminaries in the conservation movement, such as scientist Aldo Leopold, forester Bob Marshall, writer Howard Zahniser, teacher Sigurd Olson, biologists Olaus, Adolph, and Mardy Murie, and conservationists David Brower and Marjory Stoneman Douglas, believed that the people of the United States could protect and preserve the wilderness in order for the wilderness to last well into the future;

Whereas Senator Hubert H. Humphrey, a Democrat from Minnesota, and Representative John Saylor, a Republican from Pennsylvania, originally introduced the Wilderness Act with strong bipartisan support in both houses of Congress;

Whereas, with the help of colleagues (including cosponsors Senators Clinton P. Anderson, Gaylord Nelson, William Proxmire, and Henry "Scoop" M. Jackson, and the Senate floor manager, Senator Frank Church) and conservation allies (such as Secretary of Interior Stewart L. Udall and Representative Morris K. Udall), Senator Humphrey and Representative Saylor worked tirelessly for 8 years to secure nearly unanimous passage of the legislation, with a vote of 78 to 12 in the Senate and 373 to 1 in the House of Representatives;

Whereas critical support in the Senate for the Wilderness Act came from 3 Senators who still serve in the Senate as of 2009: Senator Robert C. Byrd, Senator Daniel Inouye, and Senator Edward M. Kennedy;

Whereas President John F. Kennedy, who took office in 1961 with an agenda that included a plan to enact wilderness legislation, was assassinated before he could sign into law a bill concerning the wilderness;

Whereas 4 wilderness champions, Aldo Leopold, Olaus Murie, Bob Marshall, and Howard Zahniser also passed away before witnessing passage of a wilderness bill;

Whereas President Lyndon B. Johnson signed into law the Wilderness Act in the Rose Garden on September 3, 1964, establishing a system of wilderness heritage, as President Kennedy and the conservation community had envisioned and advocated for ardently;

Whereas, in 2009, as a consequence of popular support, the people of the United States continue to have a system that protects wilderness for the permanent good of the United States;

Whereas, over the 45 years since the enactment of the Wilderness Act, various Presidents of both parties, leaders of Congress, and experts in the land management agencies within the Departments of the Interior and Agriculture have expanded the system of wilderness protection;

Whereas the Wilderness Act instituted an unambiguous national policy to recognize the natural heritage of the United States as a valuable resource and to protect the wilderness for future generations to use and enjoy;

Whereas wilderness offers numerous values for an increasingly diverse populace, allowing youth and adults from urban and rural communities to experience nature and explore opportunities for healthy recreation;

Whereas wilderness provides intact, healthy, and biologically diverse ecosystems that will better withstand the effects of global warming and help communities in the United States adapt to a changing climate;

Whereas wilderness provides billions of dollars of ecosystem services in the form of safe drinking water, clean air, and recreational opportunities;

Whereas 44 of the 50 States have protected wilderness areas;

Whereas the abundance of natural heritage of the United States is seen from Alaska to Florida, from Fire Island in the Long Island South Shore of New York and West Sister Island of Lake Erie in Ohio, to larger areas such as the Mojave National Preserve in California and the River of No Return in Idaho; and

Whereas President Gerald R. Ford stated that the National Wilderness Preservation System "serves a basic need of all Americans, even those who may never visit a wilderness area—the preservation of a vital element in our heritage" and that "wilderness preservation ensures that a central facet of our Nation can still be realized, not just remembered": Now, therefore, be it

*Resolved*, That the Senate—

(1) commemorates the 45th anniversary of the Wilderness Act (16 U.S.C. 1131 et seq.);

(2) recognizes and commends the extraordinary work of the individuals and organizations involved in building the National Wilderness Preservation System; and

(3) is grateful for the wilderness, a tremendous asset the United States continues to preserve as a gift to future generations of the United States.

#### DISCHARGE AND REFERRAL—S. 1547

Mr. WARNER. Mr. President, I ask unanimous consent that S. 1547 be discharged from the Committee on Banking, Housing and Urban Affairs and be referred to the Committee on Veterans Affairs.

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

#### ORDERS FOR THURSDAY, AUGUST 6, 2009

Mr. WARNER. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30

a.m. tomorrow, Thursday, August 6; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day, and that there be a period of morning business until 10 a.m. with Senators permitted to speak therein for up to 10 minutes each; that following morning business the Senate proceed to executive session and resume consideration of the nomination of Sonia Sotomayor as provided for under the previous order.

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

#### PROGRAM

Mr. WARNER. Under the previous order, at 3 p.m. tomorrow, the Senate will proceed to vote on confirmation of the nomination of Judge Sonia Sotomayor to be Associate Justice of the Supreme Court of the United States. Upon disposition of the nomination, the Senate will return to the consideration of the supplemental appropriations bill for the Consumer Assistance to Recycle and Save Program.

Under the agreement, up to seven amendments are in order prior to a vote on the passage of the bill. When we return from the August recess, at 5:30 p.m. on Tuesday, September 8, the Senate will proceed to a cloture vote on the Dorgan substitute amendment to the Travel Promotion Act.

#### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. WARNER. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 9:09 p.m., adjourned until Thursday, August 6, 2009, at 9:30 a.m.

#### NOMINATIONS

Executive nominations received by the Senate:

##### DEPARTMENT OF DEFENSE

FRANK KENDALL III, OF VIRGINIA, TO BE DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY, VICE JAMES I. FINLEY, RESIGNED.

##### DEPARTMENT OF LABOR

DAVID MORRIS MICHAELS, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE EDWIN G. FOULKE, JR.